No Hindu Law texts—(*Contd.*)

III. The **Subodhini**—A commentary by Viśveśwara Bhaṭṭa—on the **Mitākshara** of Śri Vijnāneśvara, Vyavahārādhyāya. Complete with list of contents, and Index as in Vol. I. [ Price Rs. **2-8.**

IV. English translation of **Subhodhini** Rs **10.**

V. **Bālambhaṭṭi**—Āchārādhyāya. (Text) a commentary on the Āchārādhyāya of the Mitākshara by Bālambhaṭṭa Pāyagunde of Benares. List of contents and Index, as in Vol. I and an exhaustive Preface by Babu Govind Dass. [ Price Rs. **10.**

VI. **Bālambhaṭṭi**—Vyavahārādhyāya Do. Do. (Text) [ Price Rs. **6.**

VII. **Bālambhaṭṭi**—English Translation of Vol. VI.

VIII. **Bālambhaṭṭi**—Prāyaschittādhyāya (Text) [ Price Rs. **6.**

IX. The **Manusmṛiti** with the gloss of **Medhātithi** ( Text ).

The list of contents is exhaustive and specifies each verse and its contents, as well as the contents, of the commentary thereon. The Index to verses is to each quarter of a verse. This is followed by an Index to the several Authors, Ṛshis referred to, to Miscellaneous Quotations, to the Sutras and Vārtikas of Grammar, to the several Nyāyas or Maxims &c. *The Bound Volume* contains Text pp. 1–942+250.

Not available.

X. English Translation of Vol. IX.

XI. The **Smṛtichandrikā** by Devānandabhaṭṭa. (Text). The Ānhika Vyawahāra and Śrāddha Prakaraṇas complete pp. 1–736+104 with Indices as in Vol. IX.

Price Rs. **12.**

XII. English Translation of the above *i. e.* Vol. XI.

XIII. The **Sāpinḍya Pradipa** or the Law of Sapinḍa relationship —by Nagojibhṭṭa with an English Translation. Appendices containing extracts from other works on the Sapinḍa relationship and an exhaustive Introduction dealing with the whole law of Sapinḍa relationship as laid down in the texts and as interpreted in courts of law (Text printed).

XIV to XXV. The **Twelve Mayūkhas** by **Bhaṭṭa Nilakanṭha** collectively known as the Bhagavanta-Bhāskara.

XIV-A. The **Vyawahāra-Mayukha**—Text complete and published with List of contents, Indices &c,. Rs. **3.**

THE

Collection of Hindu Law Texts.

(No. 4).

# THE SUBODHINI

BEING A COMMENTARY BY

**BHATTA VIS'WES'WARA**

ON

**The Vyawahârâdhyâya of the Mitâkṣharâ of Srî Vijñâneśwara on the Yâjñavalkya Smṛti**

---

# AN ENGLISH TRANSLATION

BY

J. R. GHARPURE B. A. LL. B. (HONS.)
*Advocate, High Court, Bombay.*
*Principal, Law College, Poona.*
Professor of *Dharmaśâstra* and *Ancient Indian Culture*
Bhandarkar Oriental Research Institute, Poona.

---

FIRST EDITION.

---





---

1930.

POONA:

Prin[illegible] the Aryabhushan Press, No. 936/2 Bhamburda Peth, Poona City
by Anant Vinayak Patvardhan and
Published by J. R. Gharpure at the office of the Collections of
Hindu Law Texts, Girgaon, Bombay.

# LIST OF CONTENTS.

## CONTENTS.

—:0:—

---

*To*

**The Right Honourable**

**V. S. SRINIVASA SASTRI P. C.**

# INTRODUCTION.

This Volume is the Fourth in this series according to the order originally prospected, but is the 22nd in the chronological order of books published. The translation is based upon the Edition of the Text in Sanskrit published as Vol. III of this series. As this is a running commentary on the **Mitâkṣharâ**, which again is a commentary on the great **Smṛti of Srī Yâjñavalkya**, the Verses in the original Smṛti of **Yâjñavalkya** have been indicated in black types at the top of each. The references to the text of the Mitākṣharā and its translation have been indicated in brackets following each. The references are in accordance with the *text* and the *translation* published in this series at Nos. 1 and 2. The *text of the Mitākṣharā* has been printed *in thick black types* and *the translation* has been printed *in italics*. **Thus :**

**Bhasmâdisaṃsparśane tu iti** ( R. 132. l. 20). *In cases of assaults by means of ashes &c.* (p. 353. l. 7)

**indicates that this passage is at p. 132, l. 20 of the text and p. 353 l. 7 of the translation.**

As is the case with many other writers very scanty material is available to enable a detailed account of the life and career of the Author. From the opening and the closing verses of Subodhini it is clear that Bhaṭṭa Viśweśwara was the son of Pedi Bhaṭṭa also otherwise known as Appā Bhaṭṭa, his mother's name was Ambikā who perhaps was also known as Lakshmi, the family *Gotra* was *Kauśika* and it followed the Śakala Śākhâ.

He flourished in the reign of King Madanapāla of Kāshṭhā, a city in the north of Delhi and on the banks of the Mahānadi and the Jamnā. This king reigned in the 15th century of the Vikrama era and our Author therefore lived during that period. The Madana Pārijāta, another work written by him under the auspices of the same king was written in the Vikrama year 1430 the name of the year being Sādhārana correspond-

ing to 1373 of the Christian era. King Madanapâla was the son of king Sahārana or Sâdhârana and the grandson of king Harischandra, who was the son of Bhawapâla or Bharahapala and the grandson of Ratnapâla. Mâdanapâl's brother was Sahajapâla and his son's name was Mândhâtâ.

Besides the Subodhini, Bhatta Visweswara wrote the following works: viz. (1) **Madana Pârijâta** (2) **Mahâdânapaddhati** (3) **Mahârṇava Karma-Vipâka** or **Karma-Vipâka** and (4) **Smṛtikaumudi.**

(1) *The Madana Pârājâta* is an independent nibandha or digest on the Dharma-sâstra and is divided into nine stabakas or plates treating respectively of (1) Brahmacharya, (2) Gârhasthya, (3) Ānhika, (4) Garbhâdânâdisanskâra, (5) Āsaucha (6) Drawya Śuddhi (7) Śrâddha, (8) Vibhâga, and (9) Prâyaschitta. This work is regarded as of authority under the Benares School of Hindu law supplementing the Mitâksharâ where necessary. Although the work is attributed to Madanapâla, it was really the handiwork of *Viśveśvara Bhaṭṭa.*

The *Mahārṇava Karmavipāka* was written during the reign of Māndhâtâ the son of the king Madanapâla as appears from the conclud ing portion of the manuscripts of the work in the Deccan College collection. The introduction contains some of the verses which are found in the *Subodhini* and *Madanapârijâta* such as मतिर्येषां शास्त्रे. &c. The *Smṛtikaumudi* also opens with the verse नमः सकलकल्याण &c.

The present translation is based upon the text published in the Collection of Hindu Law Texts. Of the three commentaries on the *Mitâksharâ* this is the oldest and by far the best. Its author flourished about two centuries after *Vijñāneśwara* when the usages and social ideas of the time of *Vijñāneśwara* had not undergone much change. A comparison of this work with that of the voluminous commentary known as the *Bālambhatti* brings out the important fact that the latter work has been largely based on the earlier brief exposition by *Bhaṭṭa Viśweśwara.* The book reveals the great learning and acumen of the writer. On points

of ambiguity and uncertainty the exposition contained in this work has been found to be of use and importance; vide L. R. 50 I. A. 32. *Bhaṭṭa Viśweśwara* is of greater authority in the Benares School, than eslewhere, on account of his work the *Madana Pārijāta* which is regarded as a very important work supplementing the *Mitākshara*, wherever it needs supplementing.

The family of the Bhaṭṭas occupies a very prominent position in the Sanskrit literature. This *Viśweśwara Bhaṭṭa* however must not be confounded with his later namesake who was also known as *Gāgā Bhaṭṭa*, and who has come to be known in Maratha history by his association with the coronation of *Shivaji* the great founder of the Maratha Empire.

In addition to the manuscripts used for determining the Sanskrit text—already published, Mr. S. S. Setlur's compilation published later on, and a manuscript in the possession of Mr. M. V. Bhat, Advocate High Court, were availed of in determining correct readings for this translation. The writer acknowledges his obligation to both these.

# THE VISWESWARI OR SUBODHINI

A COMMENTARY ON

# THE MITÂKṢHARÂ

BOOK II

## POSITIVE LAW.

## Chapter I.

### GENERAL RULES OF PROCEDURE.

Bow to the prosperous Gaṇeśa

Benediction.

"Bow to the great God who holds the *Pināka* bow, and who is the "source of all blessings; bow to the God in whom "Lakṣhmi, the Goddess of Wealth finds pleasure; bow "also to the (guardian) Deity of Speech" (1).

"He who is known as the talented and prosperous **Bhaṭṭa Viśwe- "śwara** and who is the born son of **Appâ Bhaṭṭa** writes this commen- "tary called **Subodhini** ( elucidating the meaning ) of the work called "**Mitâkṣharâ**" (2).

"May this composition of the pupil of the sage who is the "foremost in the Forest of Vyāsa obtain a permanent position in the "minds, pure like the surface of a mirror, of those right-minded men, "who are few in number in this world, who possess a high and praise- "worthy charcater, whose dealings are fair, and whose appreciation of "the *Śāstra* has a natural attractiveness of its own." (3).

## INTRODUCTORY.

At the end of the former Book[1], while describing in details the 'duties of kings', and by laying down there as a rule[1] of law that the guilty should be punished, and the innocent protected properly, it has been said that the authorities entrusted with the task of government should daily conduct judicial proceedings. The second Book is being commenced with the object of answering the inquiry as to the nature, kind, and details of the aforesaid judicial proceedings. **Abhiṣhekâdiguṇa-yuktasyeti**[3] (*possessiug the qualification of annointment* &c. p. 1. 1. 2).

1. *i. e.* Âchârâdhyâya.
2. Vidhi: literally means an injunction. See note on Hindu Law Texts.
3. Mit. P. 1. l. 5.

By the injunction[1] of performance in the text, 'The King should attend personally to the administration of justice[2],' the holding of a judicial inquiry with all its essentials has been laid down as a duty in the last Book.[3] Here the second Book is begun in answer to an inquiry about the essentials. The meaning is this.—The connection of the two books is that these are related as the cause and the thing possessing the cause.

---

## Yâjñavalkya Verse 1.

Anticipating the question—'what sort is this *Vyawahâra*'? The *Author* explains the nature of *Vyawahâra,* commencing with the base[4] word in the text, **Vyawahârân** &c. **Anyavirodheneti**[5] ( *against another* &c., p. 1. 1. 15). the author expounds the same by an example. **Yathâ Kaschiditi** ( As *e. g., where a certain person* &c. ). The Kinds of *Vyawahâra* are indicated by the use of the accusative plural termination with the word *Vyawahâra* which stands in the position of the base word; so the author says **Tasyânekavidhattwamiti**[6] ( *its variety* &c. p. 1. 1. 19 ). The author indicates the object with which the word *Nripa* is used. **Nripa**[7]**iti** (*By the word King* &c. p. 1. 1. 20.). **Neti**[8] ( *Not* &c. p. 1. 1. 2. 1. (The author removes the (charge of) repetition of the expression 'should attend personally to the administration of justice[9].' **Paśyediti**[10] (*should administer* &c. p. 1. 1. 12 ) **Purvoktasyânuwâda iti** (*a repetition of what was said before* &c., p. 1. 1. 13.) Here the text is to be construed as follows :—The clause 'the King should attend personally to the administration of justice' is to be ( connected ) with the clause 'in conformity with the principles of *Dharma*' presently to be described. The Author mentions the same particular *Dharma.* [11]**Vidwadbhirveda-vyâkaraṇa-dharmasâstrâbhijñairiti** ( *Along with the learned—with those well-versed in works on legal science and the Vedas, grammar &c.,* p. 2. 1. 4 & 5 ). —*i. e,* the rule requiring the association of learned Brahmaṇs. This very rule constitutes

---

1. See page IV, note on Hindu Law Texts.

2. Yâjñavalkya Âchârâdhyâya V. 360.

3. Lit. Chapter. The Yâjñavalkya-Smṛiti has three chapters *viz.* Âchâra, Vyavahâra and Prâyaschitta.

4. Prâtipadika is a term which occurs in every word or form. In grammar it means the crude form. अर्थवदधातुरप्रत्ययः प्रातिपदिकम्' व्या. सू. १–२–४५. 'A significant form of a word, not being a verbal root, or an affix is called a *Prātipadika* or crude form.' Here it is used to indicate a principal or significant word.

5. Mit. p. 1. 1. 11. 6. Mit. p.. 1 1 12. 7. Mit. p. 1. 1. 12. 8. Mit. p. 1. 1. 12 9. Mit. Eng. p. 11. 8. 10. Mit. p. 1. 1. 14. 11. Mit. p. 1. 1. 15.

the details *i. e.*, the mode of attending to the details (*of vyawahâra*) Thus it is plain that the whole of the remaining portion of this Book is an elaboration of the first verse of this second Book.

It may be said that the pre-minence of the Brâhmaṇas and the king is equal in the matter of the decision of suits, so the author removes this doubt by **Brâhmaṇaiḥ Saheti**[1] (*by the expression 'with Brâhmaṇs'* p. 2. 1. 7). **Teṣhâm** (1. 16) (Their) *i. e.* of the Brâhmaṇas.

It may be asked how can the absence of equality be inferred from the use of the instrumental? So the Author says:

* PAGE 2. **Saha yukte apradhâne iti**[2] (*conjunctive use with saha indicates subordination* &c. p. 2. 1. 10). The meaning of this is as follows :—When used with the preposition, *saha* (*with*) the Instrumental case indicates subordination. As in the expression 'the father has come along *with* the son' and similar expressions; so here also by the use of the expression 'along with Brâhmaṇas, the subordination *i. e. the dependence* of the Brâhmaṇs follows from the use of the Instrumental case with (the conjunctive particle) *saha.*

The Author mentions the result of regarding the King as the principal and the Brâhmaṇs as accessories. **Ataschâdarṣana iti** (1. 16) (*hence in the case of absence of a decision* &c. p. 2. 1. 11). The import is this ; the blame of the King is greater as he is the principal. Of the Brâhmaṇas, however, so much blame does not exist. Not, be it marked, an absolute absence of blame, for in that case there would be a conflict with the text " Either the Court must not be entered or the truth must be spoken ; a man who either speaks nothing or speaks falsely becomes sinful (guilty.)"[5]

---

## Yâjñavalkya Verse 2.

The Councillors chosen should be (in addition to and) different from the Brâhmaṇas spoken of before ; so the Author says, **Kincheti.** (*further* &c., p. 3. 1. 3). Even the said councillors should be Brâhmaṇs only ; so the author says **Yad"yapîti**[3] (*although* &c. p. 3. 1. 14.) **Sa tu Sahbyairiti.** (*Moreover he accompanied by the Councillors* &c. p. 3 1. 15.) He (sa) *i. e.* the King **Sabhyaiḥ** (*by the Councillors*) **Sthiraiḥ** (*steady,*) unmoved. **Prâjñaiḥ** (*Special Scholars*) possessing intelligence. **Maulaiḥ** (*of high parentage* p. 3. 1. 16.) descended through father, grand-father.[4] **Arthaśâstram** (*Science of polity*) the works of Uśanas and others.

---

1. i. e. a long ancestry. 2. Mit. p. 1. 1. 15. 3. P. 1. 1. 16.
4. Manu. Chap. VIII, 1. 2. 5. Mit. p. 2. 1.

**Te cha traya iti** ( *thoss moreover should be three* &c. p. 3. 1. 18.) They (te) *i. e.* the Councillors. The Author mentions a different view. **Brihaspatistu iti** ( *Brahaspati, however* &c. p. 3. 1. 21.)

It may be urged, the rule requiring the qualification of 'accomplishment by learning and study,' may be taken to have a reference to the 'learned *Brâhmaṇs*' spoken of in the text, " A King should administer justice &c ", so that, by virtue of the qualification of accomplishment by learning and study and the like, these Councillors are not different from those learned Brâhmaṇs spoken of before. Anticipating this contention, the Author meets it by **Na cha Brâhamaṇaih sahetyâdi** [ *It should not, however, be supposed that the words 'with Brâhmaṇas'* &c., p. 3. 1. 25. ]

It cannot be said that those very Brâhmaṇs are referred to as Councillors, inasmuch as **Kâtyâyana** has distinctly differentiated the Brâhmaṇs mentioned before[1] from the Councillors. Therefore as there would be a conflict with this text ( of **Kâtyâyna** ), and, moreover as there is the absence of the relation of an adjective and the noun qualified ( by it ), the meaning is that the rule regarding the investiture as Councillors ( in verse 2 ) cannot be said to have been made with reference to these ( *i. e.* the Brâhmaṇs ). **Saprâdvivâka iti** ( *with the help of the Chief Judge* &c. p. 3. 1. 34. ) Prâdvivâkah is a representative of the King. **Amâtyâḥ** ( *Ministers* ) *i. e.* advisory ministers.

The Author mentions different classes of Brâhmaṇs on the principle of their being not ( required to be ) appointed. **Brâhmaṇâpyaniyuktâ ityâdinâ** ( *Brâhmanas also being not appointed* &c. ) Here the person having the authority to appoint is the King. By him appionted and not appointed. This is the meaning. The meaning is that even they become co-sharers with him in it.

The Author explains the meaning that arises from the words in the original text :—**Ripau mitre cheti** ( *to friend and foes* &c., p. 3. 1. 2 ). **Chaśabdâditi** ( *by the word cha* &c. )

---

## Yâjñavalkya Verse 3.

The holding of judicial proceedings every day has been laid down as a duty for a King. So also has been laid down the performance of propitiatory ceremonies for the removal of calamities. It may, therefore, be asked what should be done if by chance the two ( duties ) come

---

1. *i. e.* in the first verse.

into conflict? The answer is, that a Brâhmaṇa, or in his absence a Vaisya possessing the qualities of self-restraint and being other than the Councillors should be appointed to investigate judical proceedings. So the author says by **Vyavahârânnripah pasyedityuktam ityâdinâ** &c (*It has been said that the king should decide disputes*) The author wishes to indicate that the course given by the revered sage **Yâjñavalkya** as an alternative has been regarded as a principal one by **Nârada**, so he says **Nâradena twayameveti**. (*This very thing, however, by* **Nârada** &c). The meaning is that, as kings have no time on account of their manifold engagements, it is proper that investigation of judicial proceedings should daily be caused to be made through another person of the aforesaid description and acting as his proxy; therefore this is the principal course (and not an alternative). From the introductory words **Dharma-sâstram puraskritya** (*placing before him Dharma-şâstram*), it appears to be implied that the person appointed by the King has alone authority to investigate cases.

**Prâdvivâkamate Sthitaḥ iti** (*adhering to the opinion of the Chief Judge* &c. p. 4, l. 37.) The meaning is that the Chief Judge appointed according to *Dharm-Śâstra* should be induced to go by means of persuasion &c. and not under any restraint or control.

He who asks, sifts or discriminates; so this name *Prâdvivâka* (Chief Judge) has an etymological, and not—as in the case of Aśvakarṇa—*a* current meaning. Wishing to indicate this, the author says: **Tasya Cheyam Yaugikîti** (*This, however, is its etymological* &c. p. 5. l. 3) **Prichchatîti Prât** (He who *questions is a Prât* &c. p. 5. l. 3). The *Quib* (क्विप्) ending has been obtained under the rule in the *vârtika*[1] (वार्तिक) *quib vachi-prachchi* &c. according to which the vowel becomes long and there is no (संप्रसारण) *sampra-sârana*.[2] **Vivinakti** (*discriminates*) considers. Discriminates or sifts, means expounds in detail.

---

1. The following is the full text of the *Vārtika* क्विब्वचिप्रच्छ्यायतस्तुकटप्रुजुश्रीणां दीर्घोऽसंप्रसारणं च' (see *Sindhānta Kaumudi on* अन्येभ्योऽपि दृश्यते *3-2-178* in *Kridanta* affixes.) which when translated would read thus: "The vowels in the roots वच् प्रच्छ् आयस्तु कटप्रु, जु and श्री become long when the क्विप् termination is affixed, and no Samprasâraṇa takes place." क्विप् is a termination which when affixed to a root, nothing remains of the termination and the root is modified into its crude form.

2. The *Samprasārṇa* (संप्रसारण) is a change of the semi-vowels य् व् र and ल् into इ उ ऋ and लृ respect ve y. (See *Pāṇini* I. 1. 45 'इग्यणः संप्रसारणम्.') It is properly the name of the vowel which has replaced the semi-vowel. Thus the past participle of स्वप् 'to sleep' is formed by adding क्त to स्वप् I. 1. 15 'क्तक्तवतू निष्ठा' *i. e.* स्वप्+त. But u der VI-1-15 'वचिस्वपियजादीनां किति' there is a *Samprasāraṇa* before the कित् affixes and so we have सुप्त, *i. e.* the व् in the root is replacd by उ.

The term, however, is also employed to designate the process under which the change takes place, as in दिवकामः (दिवि कामो यस्य सः) VI. 1. 131.

* PAGE 3.

## Yâjñavalkya Verse 4.

Councillors acting against the provisions of *Dharma-Śâstra* through feelings of passion, malice &c. should each be separately punished with a fine double in amount which would accrue as damages for a defeat in the suit, excepting in the cases of ignorance, misapprehension &c. This the author indicates by **Api cha râgâdityâdinâ**[1] (*Moreover if out of passion* p. 5. l. 18.) **Sabhyâḥ** (Councillors l. 16.) is a term for 'the appointed.' Hence it is that a lighter punishment should be understood for the unappointed in comparison with (that prescribed for) the appointed. Of the appointed the guilt becomes aggravated by their acting against the provisions of *Dharma-S'âstra,* inasmuch as they were specially comissioned (to follow these provisions). Of the unappoited, however, the guilt is smaller, on account of the absence of the special commission. And this is quite proper. Moreover, in the case of the appointed there is an infraction of the dictates of *Smṛtis,* and also a disobedience of the King's command, while in the case of the unappointed the infraction of the *Smṛtis* only.

**Ashtâ-chatvârinśat-sanskârairiti**[2]—(*by the 48 purificatory ceremonies* &c. p. 6. l. 5.) These *Sanskârs* or sacraments or *purificatory ceremonies* have been enumerated by **Gautama** as follows :—(1) The *Garbhâdhâna* (or ceremony before conception.) (2) The *Pûmsavana* (ceremony to secure the birth of a male child). (3) The *Sîmantonnayana* (or the parting of the pregnant wife's hair). (4) The *Jâtakarma* (or the ceremony at the birth of a child. (5) The *Nâma karaṇa* (the ceremony of naming the child). (6) The *Nishkramaṇa* (or the ceremony of taking the child out of the house for the first time). (7) The *Anna-prâśana* (the ceremony of feeding the child with food, cooked rice &c.). (8 & 9) The two ceremonies of *Chaula* (tonsure) and *Upanayana* (initiation), (10-13) The four vows for the study of the Vedas. (14) The *Snânam* (or the bath, on completion of the studentship), (15) The (sacred) union with the wife, as a companion for the performance of religious duties. (20) The performance of five sacrifices *i. e.* to gods, manes, men, spirits and Brâhmans. The meaning is that the performance of the five sacrifices is intended in connection with these in the ceremonies mentioned above, as also in connection with sacrifices to gods.

The seven kinds of **Pâkasansthâs** (ordinary or domestic sacrifices) *viz.* (1) The *Ashtakâ* (2) the *Pârvaṇa* and (3) the ordinary

1. Mit. p. 3. l. 13.
2. Mit. p. 3. l. 20.

*Śrâddhas* (4) the *S'râvaṇi* and (5) the *Âgrahâyaṇi*, (6) the *Chaitri* and (7) the *Âśvayuji*.

The seven kinds of **Haviryajña-Sansthâs** ( or sacrifices requiring oblation of food &c. ) *viz.* (1) the *Agnyâdheya* (2) the *Agnihotra* (3) the two *Darśa* and *Paurnamâsa*, (4) the *Châturmâsyas*, (5) the *Agrayaṇa* sacrifice (6) the *Niruḍha Paśubandhu*, and (7) the *Sautrâmaṇi*.

The seven kinds of **Soma-Sansthâs** ( or the Soma sacrifices) *viz*; the *Agnishṭoma*, the *Atyagnishṭoma*, the *Ukthaḥ*, the *Shodaśi*, the *Vâjapeya*, the *Atirâtra*, and the *Aptoryâma*. These are the forty purificatory ceremonies or sacraments.

A *Sanskâra* is of two kinds. The *Brâhma* and the *Daiva*. Those beginning with the *Garbhâdhâna* and ending with the *Snâna* constitute what are called Brâhma, while the *Pâkayajñas* (the domestic sacrifices) *Haviryajña* ( the sacrifices of the burnt offering ), and the *Somayajñas* ( the *Soma* sacrifices ) are called *Daiva*. The sacramentary character of the domestic sacrifice and others will be seen from the following text of **Śankha** and **Likhita**: " The ceremonies called *Sanskârs* or sacrifices are those known as the *Pâkayajñas*, the *Haviryajñas*, and the *Soma* sacrifices, and ending with the Agnihotra. A Brâhmaṇa, who offers the Agnihotra ( the daily offering to the perpetual fire ) is purified by the initial sacraments and further purified by the later sacraments, and becomes constantly possessed of the eight ( prime ) virtues ( of life ) deserves to be in the region of the Brahman, attains to the level of the Brahman and does not ever fall from it." *Brâhma-laukikaḥ* ( belongs to the reigion of the Brahman ) *i. e.* deserves to be in the region of the Brahmâ. Moreover the eight prime virtues are love for all creatures, forbearance, freedom from jealousy, purity, quietism, auspiciousness, freedom from miserliness and freedom from covetousness.[1] These are the 48 Sacraments.

---

## Yâjñavalkya Verse 5.

A *wyavahâra* is an allegation before the King and the like, by way of a complaint against the defendant. The Author indicates by **Vyawahâra-vishayamâha** &c. (*subject-matter of Vyawahâra indicated*) that *Vyawahâra* is the subject matter of what is being alleged. **Âvêdayati Ched râjñe** &c. ( *if informs the King* &c. p. 6. l. 11 & 12 ): here the word *râjâ* ( king ) indicates by implication *S'renis* and others[1].

1. See Yâjñ. Verse 30 ( para 24 *ante* I. 15-46 sk. ) Nârada I. 7,

The author indicates the two-fold character of the subject-matter of a suit ( *Vyawahâra* ) by **sa cha dwividhaḥ** ( *that moreover is twofold* 1. 32. Mit. Eng. p. 6. 1. 23 ). The derivation is thus indicated, the subject wherein the accusation is in the form of a doubt, or in the form of the statement of a fact. **Hodhâ Loptramiti** (*Hodhâ, goods stolen* &c. 1. 28.) That which is concealed is *loptra i. e.* stolen wealth. " *Chaurikâ, Stainya, Chaurya* and *Steya* are words indicating theft; while *loptra* means the wealth secured thereby." Vide **Amara.**[1] **Etânyapi Sâdhya-bhedeneti**[2] ( *Even these by the variteies of the points at issue* &c. Mit. p. 7. 1. 13. ) that is to say, by a different point at issue.

**Na cha prâpitamanyeneti**[3] [ *and* ( hush np ) *one brought by another* Mit. P. 7. 1. 21 ] should not admit one brought unjustifiably by another. Or he should not hush up Mit. P. 7. 1. 20. **Na grasata** *i. e,* should not neglect or disregard an action brought *i. e.* instituted by another. 'Nor should he hush up one brought by another ' is also another reading. There the meaning is this : He should not accept or admit anything which has somehow or other become known to him, or through passion, and which has not been set up or alleged by any one of the contending parties or their relatives.

The Instrumental plural in the word *Para* in the original text ( of Yâjñavalkya ) has no ( special ) purpose[4] and hence, a suit is allowable between one man, and one, two or many men. So the Author says **Parairititi** ( *By others* etc. etc. )

**Tadbhinnasâdhyavishayamiti**[5] ( *refers to suits having different causes of action* &c., p. 7. 1. 26. ) The purport is that different causes of action, should be investigated in separate suits. This is what is intended to be said : When one man is sued by another, with the allegation 'he owes me a debt,' then in the suit which follows, one who is ( already ) sued by another should not be allowed to be sued. Thus it is that a dispute between one and many is prohibited and not in a suit where the allegation is " these owe a hundred ( coins ) to me, " can it be said that a dispute between one and many is prohibited. **Ityâdi Arthasiddhamiti**[6] ( *being evident from the context* &c. ' p. 7. 1. 32 ). The statement itself is impossible in the case of one who is not duly trained as it is not possible to approach the Royal presence in an impudent manner ; moreover, if after the first complaint being according to the requirements of law, no summons is issued to the defendant, then the

1. The lexicon called Amarakosā, 2-10-25.
2. Mit. p. 4. 1. 6. 3. Mit. p. 4. 1. 9.
4. *Cf.* I. 2-28. 'जात्याख्यायामेकस्मिन्बहुवचनमन्यतरस्याम्' *i. e.* In words expressive of a class, the plural is optionally employed to denote the singular number.
5. Mit. p. 4. 1. 12. 6. Mit. p. 4. 1, 14. 7. Mit. p. 4. 1. 15.

complaint itself is useless and (in such a case) no one should file a complaint; and moreover, the task of governing the subject would not be accomplished. For all these reasons, it is to be understood, that the duties laid down before are evident in themselves.

**Kim Kâryam kâ cha te pîdeti**[1] (*what is your suit for, and what your grievance &c.*, p. 8. l. 1.) refers to different causes of action *viz.* occasioned by any act referring to property, or by an injury caused through anger. **Akalpetyâdi.** (those that are *exempted &c*, p. 7. l. 31) **Akalpaḥ** (exempted l. 31) diseased, **Vishamasthaḥ** (*one in difficulty* 8. l. 9) one who is in (actual) difficulty. and **Kriyâkulaḥ** (*one engaged in religious duties* l. 10) engrossed in the performance of ordinary and special rites. He whose business would suffer greatly by attending (the court) is a **Kâryâtipâti** (*who would suffer great loss. &c.* l. 11.) One afflicted by the pain of separation from a relation or a friend is a **Vyasani** (*a person afflicted with pain* p. 8. l. 11.) *Intoxicated* (**Mattaḥ** l. 13.) by any intoxicating substance. **Unmattaḥ** (*possessed*) by evil spirits and the like. Always devoid of comprehension is *a* **Pramatta** (*an idiot or insane*). **Ârtaḥ** (*aggrieved* l. 14.) by adversity &c. **Hînapakshâm** (*a helpless woman* l. 14) i. e one without a protector i. e. deplorable by all people.

To the exceptions regarding summonses in the case of women, the Author mentions a counter-exception: **Tadadhînakuṭumbinyaḥ iti** (*women upon whom their families are dependent* &c. l. 18.)

A summons for one afflicted with a disease has been prohibited above. Even there, (the Author) mentions a counter-exception: **Kâlam desancha Vijñâyeti** (*Taking into consideration the time and the place* l.20).

**Sthânâsedha iti** (*confinement to a place* &c. l. 30). 'You should not go from such (and such) a place' is **Sthânâsedha** 'confinement to a place'. 'You should not go until evening' is **Kâlâsedha** 'arrest for a limited time'. 'You should not go to a village' is **Pravsâsâedhaḥ** (a restriction regarding travelling.' l. 31). 'Such (and such) an act should not be done' is (**Karmâsedhaḥ**) 'a prohibition from a specific act.' This is the distinction. **Anyathâ Kurvannâseddheti** (*one who, in causing an arrest, acts improperly* l. 34-35) e. g. by making an arrest at a time when an arrest ought not to be made. **Nirveshṭukâma iti.** (*one about to marry* p. 9 l. 3) i.e. one wishing to enter into another order[2] in life i. e. intent on marriage.

---

1. Mit. p. 4. l. 15.
2. Transition from any of the four orders viz. ब्रह्मचर्य, गार्हस्थ्य, वानप्रस्थ and यति into another.

## Yâjñavalkya Verse 6.

[1]**Hīnaḥ panchavidhaḥ smṛtaḥ iti** (*these are the five varieties of a faulty* (*Hīna*) *litigant* p. 9. ll. 31–32). i. e. on account of the text. This is to be inferred. Or the word **iti** (*etc.*) is (used as) indicative of a reason so that the meaning would be 'for the reason &c.'

The Author now introduces an explanation by way of an answer to a possible objection which may be raised to the procedure now laid down in this verse having regard to what has been said before[2]: **Âvedanakâle eveti** (*at the time of the first complaint* &c, p. 9 ll. 33–34) **Tithi-wâradineti** (*date, day* &c. l. 37). **Tithiḥ** (*date*) i. e. the first &c. **Dinam**[3] (day) i. e. daytime. **Kṣhamâlingâdîniti** (*reason for forbearance and the like* &c. p. 10. l. 1). Not resorting to an arrest or the like in regard to the defendant is **Kṣhamā** (*forbearance*) i. e. tolerance. The *reason* or cause for the same, such as infancy, idiotcy and the like.

**Arthavaddharmasaṃyuktamityādi** (*which contains the Artha, which is in accordance with the law* &c. p. 10 ll 4–5) **Arthawat** i. e. which sets out the cause of action. **Dharmasaṃyuktaṃ-Dharmaḥ** significance; i. e. in concise or diffused language or the like; *containing* (**Saṃyuktaṃ**) that. **Sampūrṇam** *complete* i. e. not dependent on any inference[4] **Anâkulam** (*devoid of confusion* l. 6) couched in clear language.[5] **Sâdhyawat** (*which contains the point at issue* p. 10 l. 3) i. e. together with the fact intended to be established. **Wâchakapadam** ( *which* is *couched in significant language* l. 7) which is devoid of words conveying an inferior or secondary sense. **Prakṛtârthânubandhi** (*consistent with the claim made out* l. 7) i. e. not contradictory to the complaint first laid. **Prasiddhaṃ** (*intelligible* l. 8) i. e. relates to things well known in the world. **Aviruddhaṃ** (*not inconsistent* l. 8) i. e. not opposed to the usage of the town or the nation, nor to what is said before or after, nor to direct means of proof or the like, nor also to the rules of judicature. **Nischitaṃ** (*certain* l. 8.) i. e. devoid of any doubt as to an alternative meaning. **Sâdhanakshamaṃ** (*capable of proof* l. 8). i. *e.* deserving to be proved. **Saṇkṣhīptam** (*concise*) i. e. not very much diffused **Nikhilārtham** (*bringing out the whole cause of action* l. 9. ) i. e.

1. From here commences the commentary on verse 6. The print indicates this clause as the last in verse 5. That is a mistake. Read this as the beginning of verse 6.
2. i. e. at the time of the first complaint.
3. i. e. as distinguished from night.
4. i. e. not open to any inferential construction.
5. असंदिग्धाक्षरं lit-not dubious.

which has left out nothing required to be said. **Desakâlâvirodhi** (*not impossible in regard to place or time* l. 9). e. g.

* PAGE 5 'he has deprived me of a mid-land area field, or a thousand of mango fruit ( harvested ) in the autumnal season, and the like. **Ahaḥ** ( *the day* l. 10 ) e.g. the first date and the like, or the day time. **Velâ** ( *the time* ) e.g. the morning or the like. **Desaḥ** ( *the country* l. 11 ). e. g. the central region and the like. **Pradesaḥ** (*particular district* l. 11 ) i. e. the particular spot in the field or the like. **Sthânam** (*the place*) e. g. Vârâṇasī or the like. **Âvasathaḥ** i. e. (*the village* ) &c. or a particular spot such as a market place or the like. **Sâdhyâkhyâ** (*the point at issue* l. 12). i. e. the name of the thing which is the subject of dispute. **Jâtiḥ** (*caste*) such as Brâhmaṇa and the like. **Âkâraḥ** (*personal description*) *e. g.* particular colour of a cow or an ox and the like, as also the particular location (in the case) of a house, field etc. **Sâdhyapramâṇasankhyâwat** (*Containing the measure and quantity of the matter in issue* l. 13). **Sâdhya pramâṇam**, the boundaries of a field and the like. **Sankhyâ** quantity i. e. of rupees or the like. **Âtmapratyarthinâmavat** (*containing the name of* (*plaintiff*) *himself and the defendant* l. 14). This is clear. **Parâtmapûrvajânekarâjanâmabhirankitam** (*marked with the names of the ancestors of himself and of the defendant respectively as also with the names of Kings* ll. 15-16), **Paraḥ** i.e. the defendant. **Âtmâ** the plaintiff. **Pûrvajâḥ** (*ancestors*), the father &c. of these. **Anekarâjânaḥ** ( *several kings* ) i. e. during the period of possession; of these the *names* (**nâmâni**) **Taischinhitam**-marked by these. **Kshamâlingâtmapīdâvat** ( *which contains the cause of forbearance and the injury done to self* ll. 16–17). The causes of forbearance have been explained.[1] **Âhartâ** (*grantee* l. 18) i. e. the acquirer by gift &c. **Dâyako** (*grantor*) i. *e* the donor. The clause where the grantee and the grantor have been mentioned–or **Kathitâhartṛdâyakamiti** may also mean–where the relationship of the plaintiff and the defendant is set out. **Kṛshṇa-bhūmaḥ**[2] **Paṇdub-hūma iti.** (*blackfield, whitefield* &c. p 11 l. 9) these two words have an अ ending, vide the following text of the Author of the Vārtikas (on Sūtra V–4–75) viz "The affix अच् (*Ach*) comes after the word भूमि preceded by the words कृष्ण, उदक्, पाण्डु, and also after the words गोदावरी and नदी when preceded by a numeral."

As an impossible complaint is regarded as a vicious plaint, as, under the rule that 'a plaint containing a mixture of several causes of

1. Above, such as infancy idiotcy &c.
2. This is the reading in Subodhini and Bâlambhatti also.

action shall not be allowed' it may be asserted that a plaint of such a kind may be regarded as vicious, so the Author argues with a view to refute such a suggestion : **Yattuanekapadeti** (*that...several causes of action* &c p. 12 ll. 5–6). That complaint i. e. the plaint which is mixed up of several causes of action shall not be permitted. **Âbhâseti** (*vicious* &c. p. 12 l. 10) is what is contained in the mental reasoning. There anticipating the question whether the term *Pada* (*cause*) having regard to its derivation as that which is inferred or known—is used as indicative of the subject in dispute or as a cause of action such as the recovery of debts or the like, the author indicates that there would be no vice in the first case and so says, **Tatra yadyaneketi** (*there if several etc.*) ; or it may be the second alternative : anticipating this, the author says **Rnâdâneti** (*recovery of debt* etc. l. 11 ). Now the author expounds the meaning which is intended of the rule " when several counts are mixed together etc." **Kintu Kriyâbhedâditi** ( *only on account of difference in the causes of action* &c. l 15 ). The author confirms the same sense under cover of a summing up thus : **Tasmâdaneketi** (*therefore as several counts etc.* l. 20 ). **Tasyârthaḥ** ( *meaning of it* l. 19 ) i. e. of the rule. With a view to expound the term 'plaintiff' in the expression 'as alleged by the plaintiff,'[1] the author proceeds **Arthigrahaṇâditi** (*by the term Arthi* &c l. 21 ). The son of the plaintiff is also a plaintiff, even so his father. By the term *Âdi etc.* is intended to mean that persons appointed by the plaintiff are also (regarded as) plaintiffs. Here, it is proper that the sons etc. of the plaintiff should be regarded as plaintiff; but the question may arise how can those appointed by the plaintiff be regarded like himself, so the author says **Niyuktasyâpîti** —(*even of the one appointed* &c. l. 22.)

---

## Yâjñvalkya Verse 7.

[2]**Aślîshtavibhaktisamâseti** ( *cases and compounds difficult to split up* p. 13. l. 35 ) **Ślîshṭaṃ** ( means ) connected, appropriated i. e. not faulty. **Aślîshṭam** means faulty. Case and compound (put together make up the compound expression) cases and compounds. Faulty cases and compounds. That which exists 'with an implication is (an expression) with an implication.' That expression which owing to the (use of) 'cases and compounds, difficult to split up' as also which is with an implication;

---

1. In Yājañavalkya Verse 6 second quarter.
2. The Mitāksharā reading is *Dushlishta* दुःश्लिष्ट.

such a one—the like of it. By the use of such: Thus is the compound to be solved. **Pratyawaskandanamiti** (*confession and avoidance* p. 14. ll 1–2) i. e. an answer with a plea *Pratipattiḥ udâṛhtâ,*. **Pratipattiḥ** (Mit. Text p. 7 ll. 7) means admission. i. e. by pleading the truth (of the plaint), does not have a different meaning. **Âchâreṇâvasannopîti** (*though defeated by customary procedure* p. 14. l. 24) i. e. defeated by a judicial trial.

'The answer of the defendant, who has heard the plaint, should be taken down in writing'. It may be argued * PAGE 6. that in this expression the word answer being in the singular number, a mixed answer would be no answer, so the Author says **Uttaramityekavachananirdesâditi** (*By using the word answer in the singular number* &c. p. 1. l. 1) **Evam Chatussankarepiti** (*So in the case of a combination of four*[1] *pleas etc.* p. 16 l. 30) e. g. where it is alleged 'he took gold, a hundred rupees, clothes and also corn', a combination of pleas in answer viz. 'I owe him gold, the hundred rupees were not taken, clothes were received as a gift, and in the case of corn, he has been defeated before' may take place in the respective order. **Atonyathâ Sankîrṇam bhavatiti** (*any other ( answer ) becomes* (*otherwise i. e. it becomes a mixed answer* &c. p. 17 l. 9) That which does not serve as an answer to the most important point, but relates equally to [ all ], as also the answer which is conducive of proof of either [ allegations ] in such a case, is different from those mentioned before ; i. e. any other variety is a mixed plea ; thus by supplying the ellipsis the other variety itself has been mentioned.

Is a mixed plea then no answer at all ? Anticipating such a question, the author says the answers cannot be simultaneously admitted but in the order in which the plaintiff and the defendant, as also the Assessors may desire, and reminds what has in substance been stated before. **Aichhikakramaḥ** (*the order depends upon choice* p. 17. l. 11–12) the meaning is that the order would be according as desired.

**Tasminnevâbhiyoga iti** (*in the same suit* &c l. 20). i. e. where it was alleged as before ' he borrowed a gold, a hundred rupees, and also clothes '. Here in an answer ' I received gold and also a hundred rupees, but have not received clothes ' there is a combination of the pleas of truth and falsehood or 'have returned' is a combination of truth and special plea. ' In regard to clothes, he has been defeated before' is a combination of truth and *res judicata*. This is the distinction.

---

1. In *Mitākasharā* p. 16. ll. 16-24 an instance of a combination of three pleas in answer. Visvesvarabhatta gives an instance of four pleas in expansion of that indicated in the *Mitākshara*.

It has been laid down that where in a mixed answer the points are of equal importance the order is optional ; but that where they are unequal, the trial shall be first in regard to the more important one. The Author mentions an exception to the rule giving first preference to the important point. **Sampratipatterbhūrivishayatvepiti** [*although the admission is the most important point* &c. p. 17 ll. 24-25.] It may be argued then that in that case a mixed plea in answer could never be put up simultaneously, so the Author says no ; and so he proceeds to remove the doubt by **yatra tu mithyâkâraṇottarayohrityâdi** ( *where however, the denial and the special plea* &c. p. 17. ll. 26-27 ) **Tasya śuddhamithyâvishayatvâditi** [*it applies to a pure denial* etc. . l. 40 ]. **Prasiddhakâraṇottara iti** [*the wellknown plea of special exception* etc. p. 18 l. 5 ] such as 'True, it was received, but it was returned' [ p. 16. ll. 7-8 ] Another would be "*this is false even before; the time mentioned*[1] *&c.* as has been shown before ( Mit. p. 17. l. 30.)

## Another Objection.

It may be said : that becomes ( a proper ) answer which refutes the allegations in the plaint. In the case, therefore, of an answer by admission, there would be no answer at all, as then such (a refutation) does not occur : Anticipating such a position, the Author says **Sampratipatterapîti** [*Likewise the plea of admission* &c p. 18 l. 20] the Author sums up the proposition that a mixed plea cannot be simultaneously set up as an answer—**Na kwachiditi** [*should not be allowed* p. l. 29.] **Pratyâkalitasyeti** ( *by ascertainiug* &c. p. 20 l. 22 ) i. e. ascertaining by repeated questions.

Thus end the General Rules of Procedure.

## Special Rules of procedure.

## Yâjñavalkya Verse 9

It may be argued that by prohibiting[2] a counter-claim by one who has been complained against, a special plea in an answer, such as "(it) was received but was returned" would be inadmissible, so the Author says **Yadyapīti** (*Although* etc. p. 21 l. 14.) One who has been complained against may even set up a counter plea refuting the com-

1. Here there is a mistake in the print Instead of एतत्प्रदर्शितं कालात् read एतत्प्रदर्शित कालात् (Mit. text p. 8 l. 28), also see Bālambhatti p. 15. l. 5.
2. Vide Yāñja II. 9. 11.

plaint against him. Otherwise it would render inadmissible the four-fold nature of an answer as laid down in the text[1]: "An answer is four-fold viz. by pleading the truth or the falsehood (of the plaint), or by setting up a special plea, or a decision in a former judicial proceeding." **Ayaṃ nishedha iti** (*this prohibition* etc. p. 21 l. 16) i.e. that contained in the text "no counterclaim should be allowed against him."

**Ekasminnapi pade iti** (*even though in the same suit* etc. p. 22 l. 11) The meaning is that even in one suit e.g. for the recovery of a debt or the like another cause of action is prohibited.

The Author expounds it by an example **Yathâneneti*** ( *e.g. he* &c. p. 22 l. 13 ). Having set up at the first complaint a false (allegation of an) advance of a hundred rupees, in the presence of the Defendant, at the time of the defence the advance at interest of a hundred clothes is alleged; although in such a case there is only one cause of action viz the recovery of a debt, still the setting up of hundred clothes in the place of a hundred of Rupees is a change in the subject-matter, and it is this that is prohibited. **Yathâveditamarthinetyanenetyarthaḥ** ( *By the text 'whatever is alleged by the plaintiff' is meant* &c. (p. 22 ll. 6–7). **Yathâ sati padântarâgamanepiti**— (*In that case, even if there be no change in the suit itself etc.* p. 22 ll. 15–16) i. e. even if there be no resort to another cause of action. In this part, the term **pada** should be understood as expressing subject-matter. **Yathâ rûpakaśatam Vṛdhyâ gṛhitwâyamiti**—( *As e. g........having taken a hundred rupees at interest, he* &c. l. 21). Having alleged at the time of the first complaint the loan at interest of a hundred rupees, at the time of the sworn complaint, an allegation of a forcible deprivation of a hundred rupees is made, although the subject matter i. e. the rupees be the same, there being a difference in the causes of action viz: advance of a debt at interest and forcible deprivation, a change in the subject is made, and it is this that is prohibited by the text[2] "nor what has already been alleged should be allowed to be changed."

* PAGE 7

What has been said **Heenawâdî daṇdya eva na prakṛtârthâdhîyate iti.** —(*a prevaricating litigant becomes amenable to punishment, but he does not lose his suit etc.* ll. 30–31)—has application to what has been said above; so the **author** says **Etachchârthavyawahâra iti** (*this, however should be observed in suits relating to property* p. 23 ll. 5–6.) **Manyukṛtaiti**

1. Of Kâtyâyana, see Mit. p. 14 ll. 3–5.
2. Yâjn. II. 9. last quarter.

&c. (*In...acts of violence* &c. l. 7.) i. e. in complaints about abuse, assault, or the like. This is the purport. By a verbal trickery of the above kind, a party loses his suit and also becomes amenable to punishment. **Na manyukṛteshwititi** (*not those originating in anger etc.* l. 12) that is to say which are not the result of anger.

---

## Yâjñavalkya Verse 10.

When a countercharge is possible, it is only in charges of felonious offences and the like, that even though himself be complained against, one should file a countercharge against the opponent, but not when it is not so, so the **Author** says[1], **Abhiyogamanistiryetyâdi** (*until the complaint is disposed of etc.* l. 26.) Indeed in such a place a doubt may arise, would a countercharge be proper by an answer, or by a separate sworn complaint ? and the answer is, it would not be proper by an answer, for it would not be a proper answer, as it would not destroy the allegation in the plaint ; nor even by a separate sworn complaint, the first sworn complaint would be one thing, and the countercharge would be (quite) a different thing. Therefore, as in the case of a mixed plea, a simultaneity of trial being inadmissible, it would not be a good answer, similarly also in the case of a separate complaint, a simultaneity of a trial being equally impossible, there would be no sworn complaint and the procedure of a counter-charge itself would be meaningless, so the **author** says : **Nanuatrâpîti** (*Indeed even in such a case* &c. p. 24 l. 6.)

**Kâryayogyastu wâdinah iti** (of *the plaintiff competent for the cause* &c. p. 25 l. 8) By the term plaintiff includes both the plaintiff and the defendant.

---

## Yâjñavalkya Verse 11.

[2]The author extends the rule stated before to other cases also **Prâṇnyâye pratywaskandane chedameva iti** (*this same . . . to res judicata and confession and avoidence* &c. p. 25 ll 27–28). The method of application is thus: In a plea of *res judicata* viz. he has been defeated in this matter before, or in a special plea viz. it was received but was returned, the party setting up the plea is unable to substantiate it, and so that party himself becomes guilty as a a false plaintiff. In such a case when the plea

1. Yājn. II. 9. First quarter.
2. From here begins the commentary on the Mitākshara on the 11 verse.

of *res judicata* and a defeat, or of a return is established by the party setting it up, the plaintiff shall pay to the King a fine only equal to the subject matter of the suit. If, however, the defendant does not establish *res judicata* or a return, then in such a case, he being in the position of a plaintiff, shall pay a fine double the amount at stake, and to the plaintiff the amount in dispute. **Sampratipratyuttare tu dandâbhâva iti** (p. 12. ll. 8–9) *In an answer of admission, however, there is no fine* &c. (p. 25 l. 33). When there is no concealment &c., there would be no fine, **Adhanavyawahâreshwiti**[1] (p. 12 p. 10) *In suits where the subject matter is other than money* &c. (p.p. 26 l. 10) i. e. since in cases of abuse, assault and the like, payment of a fine equal to the amount at stake, or its double is not possible.

It may be said that the penalty mentioned before having an application only to the Recovery of Debts, its repetition again in the rule[2] viz. 'the debtor should be made to pay by the King' is improper. Anticipating this objection the Author removes it: **Râjñâdhamarnika iti** (p.12.1.10.) *The debtor—by the King &c.* (p.26.1.3). It has been said before that the rule[3] viz, 'when upon a denial a claim is proved he should pay' applies only to the recovery of debts. Now the author propounds its applicability to all kinds of suits by **Etadeva sarvawyawahâra-vishayatwena ityâdinâ** (p. 12.1.11) *The same rule ...... as having a reference to all kinds of suits* &c. (p. 26. l. 6). **Pratipadoktameva** (p. 12.1.13) *As specified in each kind of suit* (p. 26.1. 9.) he should pay the amount as penalty. This is the construction.

Anticipating an inquiry whence is the restrictive rule, viz: specified in each suit, deduced ? the author says **Chaśabdo vadhârane iti** (p. 12 l. 13). *The word cha is used to restrict the extent* (l. 10) i.e. the word *cha* in the original text.[3] **Ityanuvâda iti** (p. 12 l. 13) *Is the repetition* &c. (p. 26 l. 1.12). Repetition because of its mention here in due course, although a punishment has been laid down directly[4] in each kind of action. **Dadyâditi vidhîyate iti.** (p. 12 1.13) *Rule laid down......be paid* &c (p. 26 l. 14) Because a double amount as fine does not arise.

* PAGE 8

1. The print in the text is अथ धन व्यवहारेति. It is a mistake. Read अधनव्यवहारेति. See Mitâksharâ Text p. 12 l. 10.
2. Yajn. II. 42. see note on p. 26 Mit. Engl. Tr.
3. Yajn. II. 11.
4. शृंगग्राहिका —Lit, taking by the horn ; i. e. in a direct manner. When one is asked to point which out of the many cattle belonged to him and he indicates some by catching hold of the horn. The point of this maxim is that it is done on the spot by pointing directly and the object of perception is indicated by a portion only. यत्रैकांगलक्षणेनैवांगी लक्ष्यते.

## Yâjñavalkya Verses 13-15.

**Desâddesântaram yâti abhiyogetha sâkṣhye wâ duṣhtaḥ sa parikīrtitaḥ iti** *Who shifis from place to place......is known as defective and unfit to be a complainant or a witness* &c. (p. 27, l. 16 and l. 21.) Predicating by (the expression) 'in mind, speech, body and action' and indicating the deformity of action, in body, speech and mind in an inverse order by the text beginning with (the passage) 'shifts from place to place' &c., the object of the Lord of the Yogis is this : by an exhibition of deformity in a broad manner, and obvious still more in the order of the organs, exhibiting the (hollowness of the) answer, by outward manifestations ; these three presently to be mentioned, are not only vicious, but deserve to have their complaint to be dismissed, and punished also.

## Yâjñavalkya Verse 16.

**Kincheti** (*Moreover* &c.). **Sandigdhamityâdinâ** (*doubtful etc.* p. 28, l. 23 ) where both the litigants have set up claims, and having explained themselves in their first complaints, [afterwards] ask that the witnesses for the complainant and the opponent should be examined, and thus set up a new plea [ in defence ]: with a view to refute this the Author explains.

## Yâjñavalkya Verse 17.

**Mithyottare Pûrvavâdina iti** (p. 14. l. 1)—*the answer is by denial of him who claims priority* &c ( p. 29. l 32.) **Pratījñâtârthasâdhanamity-anenaivoktatvâditi** (*having been laid down in the text......the evidence by means of which the matter in dispute is to be establihed* (p. 29. ll 35–36 ) What is asked for is Artha. He who has it[1] i. e. he who has to establish it. Thus in an answer of denial, the party who sets up the complaint, has the burden of proof on him. In the pleas of confession and avoidance, and of a former judgment, however, the person setting up a defence has alone the burden. The meaning is that the rule intended to be conveyed is that he who has to establish a point under dispute has on himself the burden of proof.

## Yâjñavalkya Verse 19.

**Yasmâtbhûtamapītyâdinâ** (p. 14. l. 23) *since, even a real claim* &c (p. 31. l. 3.) Even a real claim i. e. a true cause if not properly established

1. i. e. asked for it.

by proper means of evidence i. e. of witnesses &c. in a judicial proceeding. This is the connection. **Dwigatiriti** (p. 14. l. 27) *to have two courses* (p. 31. l. 15) i. e. is of two kinds. This is the meaning.

## Yâjñavalkya Verse 20.

**Ninhute likhitam naikamiti** (p. 15 l. 2) *sets up a denial, and it is not confined to one only* &c. (p. 31. ll. 26-27.) In this passage, in the first three quarters, this is the sense intended to be conveyed: If when the defendant denies in entirety the claim made by the plaintiff at the first complaint on oath plaintiff proves his claim even as to some portion, then the defendant must be ordered to pay the whole of the amount claimed. In the fourth quarter[1], however, this is the sense conveyed : A plaintiff should not be allowed to set up additional allegations not mentioned in the first information on oath. Thus by these two rules, it has been established affirmatively that only such a cause as was mentioned at the first complaint on oath can be decreed in a judicial proceeding, and also by the negative method that a cause not stated shall similarly not be secured. Since by the two-fold method of reasoning viz.[2] the affirmative and the negative, the rule that even a fact if not well established is defeated at a trial has been confirmed, hence an illustration for the same. This is the meaning.

**Tarkâparanâmeti** (p. 8, l. 37) *an alias for logic* &c. (p. 32, l. 12) A deduction from probative reasoning is another term for a logical deduction. By the combined effect of such a deduction, **Asmâdyogîsvaravachanât** (p. 15, l. 10) *From this text of the Lord of the Yogis*[3] (p. 31, l. 11) viz. where he sets up a denial. **Nyâyâdhigame Tarka iti** (p. 15, l.12) *Rules of logic are a means of arriving at a judicial decision* (p. 32.l.12-18).

1. Of the verse i. e. 20.

2. अन्वय and व्यतिरेक-i. e. the two methods of stating a proposition in sanskrit logic viz, assertion of the constant and invariable *concommittance* (अन्वय) of the major (साध्य) and the middle (हेतु) term, and *second of* the concommittance of the absence of these, known as अन्वयव्याप्ति and व्यतिरेकव्याप्ति; यत्सत्वे यत्सत्वमन्वयो, यद्भावे यद्भावो व्यतिरेकः. The first is instanced in यत्र यत्र धूमस्तत्र तत्र वन्हिः wherever there is smoke there is fire, and corresponds to the universal. A. proposition of European logic. All A is B. The second is instanced in यत्र यत्र वान्हिर्नास्ति तत्र तत्र धूम्रोऽपि नास्ति when there is no fire, there is no smoke also—and corresponds to the converted. A. proposition—All not B is not A.

A cause or हेतु is said to be connected by अन्वयव्यतिरेकव्याप्ति when both the affirmative and negative relations between the thing to be proved and the cause that proves it can be equally asserted; such a *Hetu* alone makes the argument perfectly sound and incapable of refutation. This process of arriving at the Vyâpti or universal proposition corresponds to the methods of Agreement and Difference in Mill's Logic. *Apte.* See also note 2 page 2 Mitāksharā Tr.

3. योगीश्वर:—i. e. the sage Yājñavalkya. The author uses this expression as indicative of respect to the learned sage.

The meaning of the above is this : For arriving at a just conclusion logical reasoning is a means. By means of the logical reasoning, having reached the just deduction of law, it should be directed towards the subject with reference to which justice is to be administered. Or, should be placed in the proper position so as neither to be less nor more.

It may be objected that just as in the case of a plaintiff he is not allowed, if he sets up a different case afterwards at his sworn plaint, similarly it may be that a defendant against whom proof has been established as to one portion ( of the plaint ), may also be disallowed, why should he be compelled to pay the entire claim ? Anticipating such an objection, the Author says Yes, it might have been so, if there were no express text; such a text, however, exists; so the Author says, *it is not that a defendant who has been confronted in one particular should* be condemned as a false claimant. Because, a debt being incurred by another, in such a case there is the possibility of ignorance and (thus) a false plea may not exist. This is the meaning.

* PAGE 9.

**Anekârthâbhiyogepîti Kâtyâyanavachanamiti** ( P. 15. l. 18 ) *Even in suits involving several counts, the text of Kâtyâyana &c* (p. 32. l. 27-28). The general rule as contained in the text of **Kâtyâyana**, putting aside the special rule applicable to the particular act, is made applicable to a defence made in ignorance. This is the order (of words). **Ninhavo** ( *a false answer* ) *i. e.* a ( wilful ) denial after knowledge. **Ajñânam** ( *ignorance* ) want of knowledge, **Sthiraprâyeshwiti** *in* (*suits of a*) *quasi-finite character &c.* (p. 33. l. 12-13.) The point at issue in a plaint such as 'adultery with women' or the like, is established only by signs —not a finite proof-so such suits are not of a finite nature. But in suits regarding the recovery of debts and the like, the point is (regarded as ) established only by positive proof, and so those have a quasi-finite character. This is the meaning. **Uchchyate Likhita-sarvârtha-sâdhaneti** *The answer is—that...as the means of proving the entire claim* ( p. 33. l. 19-20). The meaning is as follows: The text of **Kâtyâyana** indicates that where in a plaint, viz. that he 'has taken gold, silver, and clothes' a denial is set up viz. 'I did not take', in such a case where witnesses are cited to prove the receipt of all the things mentioned, and prove either one of the things viz. gold &c., or prove that gold, silver, clothes and even corn was taken i. e. more than the thing mentioned, even the entire claim is regarded as not established, while the text of **Yâjñavalkya** lays down, that where a defendant is sued for gold, silver, and clothes as owing, and he denies and says that he does not owe, then if the plaintiff

says that he has witnesses to prove the receipt of gold, and even if that much is established by the witnesses, the defendant should be compelled to pay up the entire claim as laid before. Thus there is a conflict between these texts : vide the text of **Kâtyâyana.** So the author points out that very text of **Kâtyâyana : Sâdhyârthâṃsepiti** (p. 15 l.27) *even a portion of the point at issue &c.* (p. 33. l. 33). In disputes such as 'adultery with women' points are set out against the defendant, and if the witnesses, who are cited for proving the entire claim, depose to a portion only of the point at issue, the entire point at issue shall be considered as established i. e. proved. This is the meaning.

---

## Yâjñavalkya Verse 21.

**Utsargâpavâdâdilakshaṇa iti** (p. 16. l. 2) *comprising general rules together with the exceptions* (p. 34 l. 7) i.e. the rule[1] viz. that 'a particular rule controls a general one' and known as the maxim of the particular restricting the general. By the term Âdi[2] (*and the like*) is meant the rule such as 'of the two, one having an object and another none, the one having none is accepted' and the like. **Vikalpâdi yathâ[3] sambhavamiti** ( p. 16. l. 5 ) *the rule of option and the like according to possibilities* (p. 34 ll. 14–15 ). By the term Âdi ( *and the like* ) here has been expressed the rule that in the case of a conflict among strong authorities the rule of *Arthavâda*[4] is to be resorted to and a conclusion reached by following appropriate rules of eqity.

---

1. उत्सर्गापवादन्याय—the maxim of the general rule and the exception. Visvesvarabhaṭha further explains this by referring to the maxim of the general and the particular सामान्यस्य विशेष बाधकं—It is explained as follows : सामान्यवाक्यस्य विशेषवाक्यानुरोधाद्विशेषे पर्यवसानमिति। यथा पुराडोशं चतुर्धा करोति आग्नेयं चतुर्धा करोति। तेन न वैश्वदेवाख्यपुराडोशस्य चतुर्धाकरणमिति। With this may be compared the maxim "*generalia specialibus non derogat*" See Jaimini VI. 8. 10. छागस्यैवाग्नीषोमीयपशुताधिकरणम्. ( Anandasrama Vol. 24. p. 372 ). This maxim is often referred to in all books on Law. (see Smriti-Chandrika pp. 142, 259, 381) .

2. The word आदि is intended to include many other न्यायs e. g. सविषयानीर्विषयये ,र्निविषयं ग्राह्यम्—Bâlāmbhaṭṭa mentions तुल्यार्थाः

3. see Mitaksharā Eng. tr. p. 35 n. 4.

4. *Arthavāda.* See Note on Hindu Law texts. p. 4 vi. An *Arthavāda* is an explanatory statement. This is complimentary either of a *Vidhi* or a *Nishedha.* It is further known to be of three kinds, Guṇavāda, Anuvāda, and Bhūtārthavâda. See Laugakshi's Arthasangraha.

It is called Gunavāda, when there is a contradiction, and it is only the quality or *guṇa* which is referred to e. g. in आदित्यो यूपः—'the *sun* is the *sacrificial post*', the contradiction is apparent, and still the sameness of the two is maintained on the sameness of *guṇa* or quality. It is Anuvâda when it consists of an asseveration—conveying a sense already established otherwise e. g. in अग्निर्हिमस्य भेषजम्—'Fire is a remedy against cold'.

It may be said, there can be a conflict of two Smrtis only when they occur in one topic and convey opposite meanings, not when they relate to different subjects or do not convey opposite meanings; and it is only when there is a conflict that the thought of (discriminating) the strong or the weak occurs. And having already laid it down before,[1] as a rule that the administration of justice should be made in conformity with the principles of legal science, the science[2] of polity like the *Auśanasa* does not affect the subject matter of a judicial proceeding. Therefore not having a common subject, a conflict between the science of polity and legal principles is far remote. Moreover even the thought of their relative strength or weakness does not appear possible. Thus anticipating an objection, the author says : true, that is so. Here there is no thought of the (relative) strength or weakness of the legal science and the science of polity like the treatise of **Uśanasa** or the like; but here the idea is of mentioning the relative strength and weakness of legal science and such passages of political science as are (found) incorporated into the legal science; and so he concludes **Dharma-śâstrânusâreṇaivetyanenaivetyâdinâ** (p. 161. 8) *in conformity with the principles of legal science &c.* (p. 35 l. 2–3)

If so, even then between such texts of political science, and the legal science, there can be no thought of discriminating the (relative) force and weakness of these texts also, since both having a common origin like *Manu* have no special feature as such inhering in the textual origin. Anticipating this, the Author says : **Yadyapi Samânakartrkatayeti** (16–11.) *although as the authors are of equal* (*authority*) [p. 35. l, 9–11.] The condition of (relative) strength or weakness does not arise on account of any special feature intrinsic in the same, but he answers (the objection by pointing out) that in a proposition of law although it has six parts, the chief place being assigned to *law*, and equally (*per contra*) in a proposition of political science, the science of polity being regarded as subordinate, the relative

---

It is Bhūtārthavâda when it consists of a statement conveying something which is neither established by another means of proof nor is in contradiction with it e. g. इंद्रो वृत्राय वज्रमुदयच्छत्:—Indra raised the thunderbolt against Vṛtra. Note the following विरोधे गुणवाद : स्यादनुवादेऽवधारिते । भूतार्थवादस्तद्धानादर्थवादस्त्रिधा मतः ॥

The Arthavāda plays an important part in the interpretation of passages and in the determination of their character whether obligatory, conditional, contingent or merely recommendatory.

1. i. e. Yâjn. II.

2. i. e. अर्थशास्त्र—Here the word is used in the restricted sense i. e. the science or art of Government and administration such as is expounded in the works of बृहस्पति, शुक्र. कामन्दक, कौटिल्य. &c.

condition of strength and weakness holds on account of the special point in the proposition (under consideration). by

* PAGE 10. **Tathâpi prameyasyeti**: *still of the principal subject &c.* ( p. 35 l. 11 ). **Śâstrâdau darśitamiti**: *has already been demonstrated before* (p. 35 l. 13 ) i. e. in the beginning[1] of the *Âcharâdhyâya*.

The Author takes[2] up an illustration mentioned by others and considers **Na tâvadgurum chetyâdinâ** *beginning with not certainly a preceptor* &c. (p. 36. l. 2), **Dharmaśâstram balavadityuktam ityantena** *and ending with the Dharmashstra should have force* (p. 36. l. 15.) Here (at the time of construing the clause ), the term **iti** *similar others* ( l. 11. ) should be taken with *not certainly* (l. 2) **na tâvat** which has been placed at a distance.

The Author states the reason why the texts quoted cannot be taken as illustrative (of the rule). **Anayorekavachanatwâsambhaveneti** *these two texts not being likely to be in ( reference to ) one subject* (p. 36. l. 16. ) The text *' the preceptor, or a child* &c ' being by nature an **Arthavâda** text, and therefore of no force as an authority in the subject concerned, the two do not relate to one subject matter. Therefore the meaning is that it does not serve as an illustration, as there is no contradiction.

The Author explains the text **Âtmanascha paritrâṇe** *and in their own defence* &c. (p. 36. l. 26 ) in **Âtmarakshaṇe dakshiṇâdînâmiti** *in self-defence or in the defence of the dakshiṇâ* ( p. 36. l. 22. ). The meaning is this : By the *a fortiori*[3] reasoning the killing of persons other than the preceptor and the like in such a case is being praised. Therefore by its laudatory nature it becomes an *Arthavâda.* Again it may be objected : that here the object intended is not the killing of the preceptor and the like, then whence could it be deduced ? So the Author says **wâśabdaśravaṇâdityâdinâ** *from the use of the word wâ* &c (p. 37. l. 1.) This is the meaning: As by making an assertion viz. 'Here exists a ghost, it may be a ghost, or a demon, or even a goblin, or a dead being, the main

1. i. e. from Verses 1–8. viz. its orbit of extent, sources, works, its definition ( verse 6 ), its indicative (ज्ञापक) and operative ( कारक ) sources ( हेतुs ).

2. V. L. दूषयति—i. e. refutes.

3. कैमुतिकन्याय—meant to indicate that what applies to less strong cases must necessarily hold in a stronger one-the maxim of 'how' much more or 'much more therefore'.

object is the maintenance of the assertion made, similarly in the Veda[1] (*Vâyu*) the wind is indeed (*wai*) the deity which is the swiftest' or "*or* those who approach these nights also become well established[2]" and in similar passages, the word *wai* ( indeed ), or the word *wâ* ( or ), and such other words are indicative of an interruption in the force of the Vidhi text; similarly the words *wâ* and *api* arrest[3] the full force of any affirmative injunctive command and there is no such injunction for killing the preceptor &c. Therefore under the texts[4] referring to the preceptor &c. viz. "a preceptor, child, or an aged man &c." and the like, an injunction as to killing not having been reached, nor in the texts[5] 'this expiation has been prescribed' and the like; therefore not having any occasion to be taken as an injunction for an expiation there is no mutual contradiction by which they could be taken as an illustration of the superior or inferior force. On the other hand both **Sumantu** and **Manu** having demonstratedan absence of guilt only in the killing of those other than a cow, a Brahmana, a preceptor, and the like, the preceptor and the like must not be killed even when( attacking as) desperados, so the Author says **Nâtatâyiwadhe dosha** &c. (p.161.25) *there is no guilt in killing an assailant* &c. (p. 37.1. 11.) Indeed here in the text of **Manu** viz. *the preceptor, nor him who expounds the Vedas* &c. (p. 37.1. 7) the mention of the preceptor &c. is merely illustrative. Moreover the intention being the prohibition of killing only, this text is intended to negative any injunction as to killing being directed to the preceptor and the like, and in that case there would be a conflict with the text of **Manu** viz. "whether a preceptor, child, or an aged man &c.", anticipating this, the Author explains **Âchâryâdînâmâtatâyinâm himsâpratishedheneti** (p.16.1.26) *it is intended to prohibit the killing of the preceptor aud others &c.* (p. 37. 1. 10). The meaning is this : The prohibition of killing of any kind being established by a general text, and there being no reason why the words preceptor etc. are not specially intended to be indicated, this text can be with a purpose only if it be understood to signify the prohibition of a particular killing. By the general prohibition of any killing, this particular killing could be included in any of the text, and this text will be without

1. This is a quotation From the तैत्तिरियसंहिता, II. I. I. The passage runs thus; वायव्यं श्वेतमालभेत भूतिकामो वायुर्वै क्षेपिष्ठा देवता. &c. He who is desirious of prosperity should offer a white animal to Vayu, Vayu *indeed* is the swftest deity. This is always cited as an illustration of an Arthavâda compliment of a Vidhi.

2. For प्रतिनिष्ठान्ति V. L. प्रतितिष्ठन्ति. This latter is a better and correct reading. This is the passage always quoted to illustrate the रात्रिसत्र maxim. See Jaimini IV. 3. 8. (17-19) Anandasrama Vol 24 pp. 245. 46.

3. V. L. प्रतिबंधक—

4 Mana XI 89

5 Ch. VII 35.

a purpose as tautologous. **Idam Vachanam** ( p. 16. l. 27 ) *this text* (p. 37. l. 9 ) *i. e.* the text of **Manu**[1] viz. '*the preceptor*' *&c.*

It may be said: indeed if this be so, then by the text 'the preceptor, nor him who expounds the vedas' &c ( p. 37. l. 7 ) the killing even of preceptors and the like when attacking with a murderous intent is not prohibited. And by the text 'By killing a desperado the slayer incurs no guilt' ( p. 46. ll. 5-6 ) an absence of blame for killing a desperado having been demonstrated, there would arise the inference that the preceptors and the like may be killed, and thus a conflict may arise between these texts, so the Author says : **Nâtatâyivadhe dosho hanturbhavati Kaschanetyetadapīti** (p. 16. l. 28) *even the text 'by killing a desperado the slayer incurs no guilt'* &c. (p. 37. ll. 12-13). The meaning is that as they refer to different objects there is no conflict. The Author points out the applicability (of the text) only to others than *Brâhmaṇas* **yato agnido** (l. 29) *since an incendiary &c.* (p. 37 l. 14). This is what is (intended to be) said: The desperado having been referred to generally, the rule that 'a guilt would be incurred *viz* by killing

* PAGE 11.

a desperado' would[2] not be a rule of general application. While the special text viz. 'There is no guilt in killing a desperado' would have a particular reference only to the text 'the preceptor or him who expounds the vedas' ( p. 37 l. 7 ) i. e. it would apply in the case of those excluding the *Brâhmaṇas* and the like. This then being established, viz. the immunity for desperados who are Brāhmaṇas or the like from being killed, if through accident a killing occurs of *Brâhmaṇa* desperados, then as the killing was accidental would the killer be entirely free from blame ? anticipating this question the Author says **Atascha Brāhmanâdayaḥ** (p. 16. l. 31) *therefore Brâhmaṇas &c.* (p. 37. l. 23). The Author gives an illustration of his view by **Taduchyate** (l.31) *should be cited &c.* (p.37. l.27). **Ata eva Dharmârthasannipâte iti** ( p. 17. l. 7 ) *hence only when dharma and artha come into conflict &c.* (p. 38. l. 2 ), since the legal science has more force. *Hence i. e.* for this reason. This is the meaning.

---

## Yâjñavalkya Verse 22.

**Śâsanamuktalakṣhaṇamiti** (p. 17. l. 13) *A royal grant has been defined before &c.* (p. 38. l. 17 ) i. e. as stated in the text[3] viz. "When making the grant of a land or of a corrody it should be done after the

---

1. Ch. VII. 351. 2. In l. 31 on p. 10 for प्रदर्शनदाताायिवधे read प्रदर्शनात् नाततायिवधे.
3. In Âchârādhyāya Verse, 318.

execution of a document" etc. **Prakârah** *kind* (p. 38. l. 20) i.e. variety. Such as eye-witnesses, hearsay-witnesses &c. and the like. Character as well as kind; those whose character and kind are presently to be mentioned; these, of that description.

It may be said that what is included in the direct and the like (varieties of evidence) alone can be (regarded as) evidence and none else. Thus a document is evidence through the context in words written on it; while witnesses are evidence on account of the words uttered by them. In which kind of evidence is possession included that it may be regarded as a means of proof? Anticipating this the author says: **Nanu likhitasya Sâkshiṇâṃ Chheti** (p. 17. l. 16) *It may be said that a writting and witnesses &c.* (p. 38 l. 21). The Author mentions things included as evidence; **Uchyate** *the answer* is (p. 38. l. 25). **Bhuktirapi kaischidviseshaṇairityâdinâ** (l. 17) *even possession when satisfying certain conditions &c.* (p. 38. l. 26). The conditions will be made clear at the time of construing the probative value. This is the meaning: **Anumâne arthâpattau wâ antarbhavatîti pramâṇamiti** (l.18) *be included in an inference or an implication and be a good means of proof &c.* (p. 38 l. 29–31). This land &c. purchased by him deserved to be his, as in the absence of an obstruction it is fit to be enjoyed long, as this is evidence of an admission[1] (of his title). This is an instance of *inference*. Or, this Devadatta had obtained by purchase or the like the property viz. the field &c. since he has been in uninterrupted possession for a long time, or has been admitted[2] to be the owner of the field etc. From the fact of an uninterrupted possession for a long time and from no other theory an inference of a purchase is drawn and therefore it is an *implication*.[3] Thus the title by purchase etc. being established by inference or implication, the right of ownership follows on account of the invariable[4] sources of title laid down in texts[5] such as "An owner is by inheritance, purchase, partition, acceptance, finding &c." and the like.

By the text[6] **Eshâmanyatamâbhâve divyânyatamamuchyate** *in the absence of these the ordeal is said to be another* (p. 38.

---

1. i. e. even though there is no actual admission on record, one such may arise by inference from conduct.
2. संप्रतिपन्नः
3. अर्थापत्तिः i.e. a necessary inference, an inference from circumstances, presumption or an implication; it is deduction of a matter from that which could not else be.
4. The student will note that the five modes stated here are universally indicated as the sources of ownership and are found in all systems of law.
5. Gautama X. 39. Cf. Mitāksharā I i 8. where this text is quoted.
6. Yajan. V. 22.

ll. 10–11) is intended to be laid down that there would be scope for an ordeal only when none of the human means of proof are available. Not only that, but it is only after a (clear) conclusion is reached viz. that human evidence is not available, that an ordeal should be resorted to as evidence. So the Author says **Mânushâbhâva eveti** (p. 17. l. 20), *in the absence of human evidence &c.* It may be asked, whence is the rule obtained that 'it is after a conclusion is reached that human evidence is not available that an ordeal should be resorted to' so the Author says, **Asmâdeva Vachanâditi** (p. 17. l. 18) *from this very text &c.* (p. 39. l. 5.) i.e. it has been so said viz. that it is an inference deduced from this very text.

The Author mentions a reason for this : **Divyasya swarûpaprâmâṇyayoriti** (p. 17. l. 21) *the nature and conclusiveness of ordeals &c.* (p. 39. l. 6). This is the meaning : It would be against rules of law to resort to the invisible when visible means of proof are (available) ; moreover the nature of an ordeal as also its evidentiary character is obtained only from the *Śastras*[1] and not pertaining to this world; it is (an) invisible (means of proof) and, therefore, so long as there is a possibility of the visible means of proof there would be no scope for the invisible proof from the text[2] "in the absence of any of these &c." the inferential deduction becomes[3] established viz. that it is only after a conclusion as to the absence of visible proof is reached that an ordeal should be resorted to as evidence. Where means are available for establishing the entire point at issue and not human, but even divine proof is adduced, in such a case let human proof alone be acceptable. Where, however, human proof is available only as to a portion of the point at issue while the divine proof is for the entire point at issue, in such a case which should be accepted ? To such a question the Author propounds an answer by anticipation **Yatrâpi pradhânaikadesasâdhanamityâdinâ** (p. 17. l. 21) *Even so...for establishing a portion of the principal point (at issue)* (p. 39 ll. 13–14). That is called the *principal* which is the original amount without interest ; a portion of that. Thus e. g. 'he borrowed a hundred rupees at this rate &c. the borrowing a hundred rupees is the principal ; receipt of rupees only is a portion, the amount is another portion.

**Asya châpawâdo dṛsyate iti** (l. 32 p. 39 l. 37) *An exception to this, however, has to be noticed* &c. What has been stated as

PAGE 12.* a general rule viz. 'that a trial by ordeal is allowable only where human evidence does not exist.' (p. 39.

1. Because being an invisible means of proof its substratum can only be a text and not any demonstrable reason. 2. i. e. in II. 22. above. 3. तात्पर्यार्थः

ll. 35–36), as a rule of option has been stated as to the witnesses and the ordeal this is an exception to the conclusion stated before.

**Tathâ lekhyâdînâmiti** (l. 33) *moreover...about a writing* &c. (p. 40. l. 3). By the term *Ādi* (&c.) are included possession and witnesses. **Tathâ dwâramârgakriyâbhogeti** (p. 18. l. 2.) *similarly...regarding the right of door or way or the right* &c. (p. 40 l. 7) The right of making a door, as also of making a way; thus the term making is connected with each (word) making a door as also making a way. There as also *regarding surface* (**Âbhoge**). *Ābhoga* (means) extent, and thus are indicated things having an extent such as a courtyard and the like. As also regarding watercourses and the like. A *Jalawâha* or a watercourse—a way for water. By the term *Ādi* are included in the case of a house and the like the place where heaps of scoured dust are thrown, or the privy &c., In the case of these i. e. those mentioned before possession alone is the proof i.e. evidence, not ordeal, nor even witnesses are evidence. So also **Dattâdatteti** (p.18. l.3) *valid and invalid gifts* &c. (p. 40. l. 11). A valid gift and an invalid gift (make up the compound word) valid and invalid gifts; regarding these i. e. known as 'Resumption of gifts' or the one known as 'A dispute, between a master and a servant', or as 'Rescission of sale'. Gambling as well as betting (together make up the word) gambling and betting. Also in a dispute known by that title, when set up, witnesses alone are the means of proof and not any other. This is the meaning. These titles at law will be expounded later[1] on.

---

## Yâjñavalkya Verse 23.

The Author mentions an illustration for the rule[2] "In all civil disputes regarding property, evidence adduced in support of a later transaction preponderates"; **Tathâ pūrvam dwikam śatamiti** (l. 12). *Similarly, where after first taking at two per cent* &c. (p. 41. ll. 7–8). Having first drawn a loan on an agreement that for a hundred *niṣkhas*,[3] the interest shall be two *niṣkhas*, at a later time, owing to personal needs, on an agreement for three *niṣkhas* as the interest for the same one hundred *niṣkhas*, this later (transaction) has force. Because as the two are contradictory (of each other), (the later) one cannot be established unless the first is refuted.[4]

---

1. i. e. in Chapters XII, XIV, XVI, XVII treated later on.
2. In Yajn. II. 23.
3. A golden coin of different values, but generally equal to one *karṣha* or *suvarṇa* of 16 *maṣhas*.
4. V. L. पूर्वभावेन.

**Nyâyamûlamevedam vachanamiti** (l. 50.) *that this text is based on reason* &c. (p. 41. l. 32). Of a thing once taken by, or given or sold to one there cannot exist a proprietory interest for the purpose of again effecting a pledge &c of it anywhere else. This itself is the rule, and this text is based on this very rule as its reason. The meaning is that with a view to make it easily comprehensible the same conclusion established by this rule is repeated again in another manner or, (it may be understood thus); this text is the very basis of the rule, thus : By this text, having laid down the rule ( of law ) that in the case of pledges and the like transactions the prior one preponderates, on the strength of that ( rule ), of a thing once kept as a pledge at one place, there cannot be another pledge etc. at any other place, owing to the absence of the right of ownership. This rule is thus deduced. Thus the expression ' this text has reason for a base ' is to be construed.

---

## Yâjñavalkya Verse 24.

**Bhukteḥ Kaiśchidviśheṣhaṇairyuktâyâ iti** (p. 18. l.22) *of possession when accompanied by certain qualifying circumstances* &c. ( p. 41. ll. 33-34). Absence of interruption, and continuance for a long time—are the qualifying circumstances ; accompanied by these.

The Author now takes up a position viz. **Paśyatobruvata &c.** *while he sees...looks on* &c. (p. 41. l. 38) and expounds it by **Pareṇa asambandhena Bhujyamânâmityâdînâ** (l. 25.) *by a stranger i. e. by one having no connection being enjoyed* &c. (p. 42. ll. 3-4. )

**An objection :** Indeed, on account of non-interruption the owner's proprietory right is not lost, and as the right of ownership cannot accrue to the occupant by possession for twenty or more years, the loss after twenty or ten years does not arise at all. Anticipating this the Author says. **Nanuityâdinâ** (l. 28). *Indeed* &c. (p.42. l. 10.) The Author states that by mere non-interruption, the proprietory right cannot be lost, (by) **na hyapratiṣhedhâditi** (l. 28) *Certainly......not on account of non-protest* &c. (p.46. l. 11.) Then the Author mentions the reason **Apratiṣiddhasyeti** (l. 28) *non-protest* &c. (p.46 l.11). The meaning is, that as gift, sale and the like have been established among the people as well as in law, as causes destroying ownership, such is not the case with non-protest.

The Author discusses the possessor's right as to ownership by possession: **Nâpi vimśativarṣhopabhogâditi** (l. 29) *nor......by possession*

*for twenty years* &c. (p. 42. l. 14.) There the author mentions the reason **Upabhogasya swatwe**[1] **apramâṇatwâditi** (l. 29–30) *because possession is not the means of ownership* &c. (p. 42. ll. 14–15). The meaning intended is this : As the inference from the smoke leads to the knowledge of the existence of fire in the mountain, and does not create it, in the same manner possession is simply indicative of ownership which is the point to be established by it. Therefore, ownership does not spring up from possession. The Author mentions another reason for the position that there can be no ( right of ) ownership by possession. **Ṛkthakrayâdishwiti.**[2] (l. 30) *among inheritance, purchase* &c. (p. 42. l.) The meaning is that among the originating causes enumerated, possession not having been mentioned, it does not possess the power to be the originating cause. The Author indicates the absence of enumeration

* PAGE 13

itself among the originating causes. **Tathâ hi Swâmi ṛkthakrayeti.** (p. 181. 31) *For, a man becomes owner... by inheritance* &c. (p. 42. l. 18). The meaning of the text of **Gautama** is this: When there exist inheritance, purchase, partition, seizure or finding one becomes an owner. Thus this sets out the enumeration of the all round general originating causes of ownership. Unobstructible heritage is (*ṛktha*) inheritance. An obstructible heritage is partition (*Samvibhâga*) ; seizure (*Parigrahaḥ*) is the appropriation of things such as grass, weed &c, in the forest &c unappropriated by any other. Finding (*adhigamaḥ*) i. e. acquisition[3] of things such as a hidden treasure and the like. The Author mentions the special[4] causes (of the origin of ownership) **Brâhmaṇasyâdhikaṃ labdhamiti.** (l. 31) *In the case of a Brâhmaṇa such acquisitions as are made by a gift or the like, being an additional special* (*cause*) (p. 42. l. 20). For a Śûdra such acquisitions as are made in the form of wages obtained for service rendered to the twice-born or the like is an additional special[5] (cause); for, according to the lexicon of **Amara**[6] "the word *nirveśa* is used to indicate wages or possession".

It may be said; indeed, this very text[7] of the Lord of the Yogis viz. "*looks on and does not object*" &c. may be taken as mentioning the originating cause of the right of ownership, so the Author says **na chedamevavachanamiti** *nor......this very text* &c. (p. 42 l. 24 ). The reason for it is **swatwasya swatwahetûnâncheti** (p. 19. ll. 1–2) *of a title by ownership or its origin* &c. (p. 42. l. 15).

1. Here there is a mistake in the print ; for स्वत्वे प्रमाणत्वात् read स्वत्वेऽप्रमाणत्वात्.
2. Vide the text of Gautama see note on page above.
3. i. e. finding.
4. i. e. additional causes as mentioned in each case.
5 Vide Gautama X. 40–42.
6. III. 3. 214.
7. Yajn. II. 24.

The meaning is this: Popular usage never functions in establishing something which is non-established, as an injunction (*vidhi*)[1] does. **Etachcha vibhâgaprakaraṇa iti** (l. 2). *This moreover......in the chapter on Partition* &c. (p. 42. l. 29). This i. e. that portion which deals with the ownership and the causes of ownership being established by popular usage.

It may then he asked: If this be so then what of the text of **Gautama**? so the Author says; This only becomes enumerated in the Śâstra that ownership should be asserted to arise, and not by those not enumerated[2] as the general rule i. e. that from which what did not exist before is created and not as implying that ownership or the causes leading to ownership are to be found in[3] the *Śâstra.* So the author says **Gautamavachanamtwiti** (l. 3) *The text of Gautama however &c.* (p. 42. l. 29). **Anâgamopabhogasya swatwahetutwe viruddhyate iti** (l. 5.) *is opposed to the theory that possession without title is the source of ownership &c.* (p. 42. l. 34.) If possession without title created ownership the prescribing a punishment for the man in possession would be impossible. But a punishment has been laid down. Therefore also, even in contradiction to that text, ownership cannot arise by possession. This is the import. Again even with the contradiction, in no case whatsoever would the right of ownership arise by possession. But there is no contradiction; for by the text **Anâgamaṃ cha**[4] **yo bhunkte** (l. 3.) *He who enjoys without title* &c. (p. 42. l. 31) the following rule is laid down, the right of ownership not arising from possession in the absence of the owner, even though for a long time, the man in possession should be punished as a thief; while the text[5] "looks on and does not object" lays down the following rule: The (owner's) title becomes extinct after twenty years' possession without interruption in the presence of the owner, and the right of ownership arises in favour of the possessor on account of (his) possession. Thus the difference between these two texts is not on account of the presence or absence. Therefore it may be argued that under the text 'looks on and does not object' the right of ownership may not arise by possession; so the Author refutes by **na chânâgamam tu yo bhuṇkte ityetaditi** (l. 5) *nor also...the text he who enjoys without*

1. विधिरत्यन्तमप्राप्तौ A *Vidhi* is an expression of an injunction when something non-established has been enjoined.
2. See Bālambhatti p. 31. ll. 25–28, where this has been made further clear.
3. Such as in the text of Gautama and similar others.
4. V. L. तु *Tu* as is in the original Mitāksharā text.
5. Yajn. II. 24.

title &c. (p. 42 l. 34; p. 43 l. 1). Indeed by a bare statement, the meaning does not become established. Anticipating this the Author mentions the reason, **Anâgamam tu yo bhuṇkta ititi** (l. 6) *he who enjoys without a title* &c. (p. 43 ll. 3-4). This is the import: Having laid down that 'he who enjoys without a title should be punished' as a general rule without any particular reference to the presence or the absence it is not proper to reach a conclusion by relation to the presence or the absence. There is no contradiction. **Nopabhoge balam Kâryamiti** (l. 7) *should not rest his case on possession* &c. (p. 43. l. 6). The meaning is that on the mere strength of possession one would not succeed. **Samakṣhabhoge**[1] **cha hânikâraṇâbhâveneti** (l. 8) *moreover an extinction of title is not possible in case of a possession with notice* &c. (p. 43. l. 7). The right of ownership would not be lost on account of non-interruption, nor would it be acquired by possession; therefore, in pursuance of what has been said before, an absence of the cause of extinction need not be observed.

It may again be said, let not the text 'looks on and does not object' be interpreted as has been done before. In the text "In the case of a pledge, of a gift, and a sale &c." preponderance for a prior transaction has been mentioned in pledges and the like; by way of exception to this has been mentioned a later transaction relating to land accompanied by possession for twenty years, while in money dealings a later transaction of ten years' duration as having greater force. It may then be asserted that thus in similar cases, even in transactions of pledge and the like a later one also should be accepted: anticipating this the Author removes it **nachaitan mantavyamityâdinâ** (l. 9) *Moreover it should not be supposed* &c. (p. 43. l. g. l. 10). Here transaction means (*Kriyâ*) doing (*Karaṇam*) i. e. an act (*Kṛtiḥ*). The objector would maintain that in the case of land, excepting those cases where possession has not heen for twenty years, as also in money transactions where possession has not been for ten years, a prior transaction of pledge and the like will indeed prevail, and that where *PAGE 14. this does not exist, a pledge or a similar transaction of a later date would have more force than a pledge and the like of a prior date. While the purport of the respondent is that a later transaction itself being absent there is no possibility of a later transaction preponderating over a prior one, for, attributes can be considered (only) when one possessing the attributes exists. Moreover,

1. i. e. with the knowledge of the owner. This is one of the elements of what is known as 'adverse possession'.

if this were so, there would be a contradiction between the texts of the Lord of the Yogis mentioned before and to be mentioned hereafter, and that would be meaningless; so the Author says **Tathâdhyâdînâm trayâṇâmiti.** *Moreover—of the three—viz. pledges &c.* (p. 43 l. 24.) The import is this : The objector says, a pledge or a like transaction of a later date accompanied by twenty years' possession or ten years' possession is strong, and that *per contra* a prior transaction will have less force. This is what is ( intended to be ) stated by the text "looks on and does not object etc." To this, the reply is, by the text[1] "Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor &c." which follows later as an exception to the one stated before, the rule has been stated that in the case of a pledge, a later transaction has no force. Moreover by interpreting the prior text as giving greater force to a transaction of a posterior date, the text next following which lays down a contrary rule, would be meaningless. It may be said, it may be that the right itself may not become extinct after twenty years by pledges and like transactions in the case of land &c. but judicial remedy would be lost in each of the transactions; so the Author says **Nâpi vyawahârahâniriti** (l. 15) *nor is the cause of action lost* &c. (p. 43. l. 27). The reason for this is **Yata Upekṣhâm Kurvata iti** (l. 15) *For......of him who neglects &c.* ( p. 43. l. 28 ). The Author demonstrates the very meaning and purpose of this text as has been stated before: **Iti Nâradenopekṣhâbhâvakṛta iti**(l.16). *.Thus Nárada has mentioned the extinction when there is neglect, and such neglect is not accompanied by circumstances explaining &c.* (p. 43. ll. 29–30. ). Those circumstances such as idiotcy, infancy and the like which lead to forbearance; caused by these i. e. on account of these. This is what is intended to be said; Even when no circumstances existed for forbearance, why did he not institute a suit when his own right was contested ? When thus charged by the defendant the plaintiff has no answer to give. In this manner has been mentioned the absence of a judicial remedy by **Nârada**, since he has specially spoken 'of him who neglects'. There it is not possible to state that a right itself is without a judicial remedy.

The Author expounds the text "looks on and does not object" in another way by **Atha matam** (l.24) *it may also be said* &c. (p.44. l. 14) This is the meaning : By uninterrupted possession for twenty years, also by a similar possession for ten years, the loss of the land[2] &c, or[3]

---

1. Yajn. II. 25.
2. For भूम्याधिक्यस्य V. L. भूम्यादिकस्य.
3. V. L. T. व्यवहारस्य वा हानिः

the loss of the right there is not demonstrated by this text. But when one's own property is being enjoyed in[1] one's own presence and if the owner does not raise any objection then in course of time there may arise a fear about the loss of a judicial remedy, and so an objection must be raised in order to obviate a fear as to the loss of a legal remedy, and so the rule as to the raising of an objection has been prescribed. The Author refutes the interpretation also by **Tachcha netyâdinâ** (p.19 l.25) *However, it is not so &c.* (p. 44. l. 17). Has this advice that 'one should not stand by' an invisible[2] purpose or a visible purpose? Not indeed a visible purpose. For in that case this advice should be taken as prescribed (only) when there exists a fear as to the loss of a judicial remedy. That, moreover, would arise only when any reason exists for the fear of the loss, and not when it does not exist; and that reason is possession measured by twenty years or the like. Then indeed it must be another. Not certainly the other. That has not been so mentioned in the text, nor is it possible. Thus having removed it at the outset and intending to add that the possession is also not like that, the Author says **Smârtakâlâyâ bhukteriti** (l. 25). *Of possession within memory &c.* (p. 44 l. 18) This is the meaning: where it is alleged that 'he is in possession of my land &c. without a gift or the like' the possession must be within memory and there would be no fear of the loss of a suit on account of such a possession, because it is possible to have witnesses and the like. Nor is it for an invisible purpose: so the Author says **tûṣhṇîm na sthâtayamititi** (p. 19 l. 26) *one should not stand by &c.* (p.44. l.20). This clause is to be taken in connection with what follows later on viz: or if the only object was to lay down the rule that (one) should not stand by. **Avivakṣhitam**[3] (l. 29) *without a purpose &c.* (p. 44 l. 21). i. e. does not fit. The meaning is this: It has to be assumed that the direction that one must not stand by, has an invisible result; and that result is to be assumed on the strength of the express rule; the assumption is stronger. It will be seen that the invisible is not (accepted) first[4] *vide* the rule "Even the hundredth part[5] of the end of a hair must not be assumed without a proof". This assumption, moreover, becomes possible when there is no (other) way. As this text can be applied in a different manner in accordance with what will be said hereafter, there is no[6] reason for assuming that this text

1. V. L. स्वसमक्षमेव स्ववस्तुनि. &c.
2. i. e. for an invisible object.
3. Here there is mistake in the print अनुपपन्नमिति is to be in the ordinary type.
4. Another reading is अदृष्टं तावन्नास्तीत्येवं प्रतीयते ।
5. For वालाग्रशतबालो read बालाग्रशतभागो.
6. Con. p. 15 l. 1 for सार्थकत्वकल्पनायां read...नायां.

* PAGE 15. can be found to have a meaning only by asserting an invisible purpose; therefore this advice that 'one should not stand by' has not an invisible purpose.

The Author points out a flaw even by assuming this text as having an invisible purpose **Vimśatigrahaṇamavivakṣhitam syâditi** (p.19. l. 16.) *The use of the term twenty would be without a purpose* (p. 44. ll. 20–21). The expression 'would be without a purpose' connects[1] the last of the foregone portion and the last of this text.

This is the meaning: The advice that 'one should not stand by' has an invisible purpose. By raising an objection some invisible result is produced and therefore it is that the advice[2] viz. "one should not stand still" is given. And the same result may be accomplished by the rule 'of twenty years' i. e. by a mere negation viz. that even[3] in the absence of the limit of twenty years one should not stand by, and thus the word twenty would be without a purpose i. e. meaningless. Or perhaps the context of the explanatory passage may[4] be explained thus: that (purpose) may not be accomplished by an easy path securing the mental satisfaction for all the people. The Author exposes the fault in that explanation[5] also by **Tachha netyâdinâ** (p. 19. l. 25.) *Even that is not so* &c. (p. 44. l. 28.) This is the meaning: It does not hold to say that this advice is for avoiding the absence of a rebutting cause for extinction of a title at law in regard to possession which is within the period of memory e. g. in a complaint that he is in possession of my land &c. with any (title) gift or the like &c. And therefore it must be said that this much is advised viz. 'one must not stand by'. Moreover the term *twenty* would be without a purpose and meaningless. Why? For want of a visible purpose, this advice must be supposed to have an invisible purpose. Because an invisible purpose can hold even in the absence of a limit in the form of twenty years. Hence, it is that the word *twenty* is without a purpose.

The Author refutes the portion that the word twenty is meaningless by **Atrochyate ityâdinâ** (p. 19. l. 27.) *It may next be said &c* (p. 44. l. 22.) The import is this: By the text 'looks on and does not object,' so much[6] only is advised viz. "one must not stand by" and nothing more. Even then the word twenty is with a meaning. Because, if the owner does not raise an objection for twenty years

1. V. L. इदं ग्रंथशेषत्वे चान्वेति.
2. for उपदिश्यते read उपदेशः
3. for मर्यादाभावे read मर्यादाभावेऽपि.
4. V. L. व्याख्यायते.
5. for व्याख्यातं read व्याख्यानं
6. for एतन्मात्र read एतावन्मात्रम्.

and the defendant enjoys possession for that period even though in reality on[1] a fraudulently executed document, then after the lapse of twenty years that document would be (considered to be) without a flaw, and therefore for[2] the purpose of refuting the fault in the document the word twenty has quite a meaning. By an uninterrupted possession for more than twenty years a document would be faultless for more than twenty years or after.

In support of this the Author quotes a text of **Kâtyâyana: Śaktasya sannidhâvartha iti** (p. 19 l. 18) in the *presence of one who is competent* (p. 44. l. 26). The Author refutes (this) by **tadapi na Âdhyâdiṣhwapīti** (p. 19. l. 29) *Even that is not so;......even in the case of pledges &c.* (p. 44. ll. 28–30.) This is the import: The word twenty having (been shown to have) a meaning on account of its capacity[2] to wipe off defects in a document, when it becomes equal even to a document established in law, the exception mentioned above i. e. in the text of the **Lord of the Yogis** viz. "Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor &c." would be contradicted.

An Objection.

It may be said: Indeed by the text "looks on and does not object" a general result having been reached viz. the removal of defects in documents generally in all cases after an uninterrupted possession for twenty years, by the particular text viz. "Pledges, boundaries, open deposits &c." that does not happen in regard to pledges[3] and the like, but even after twenty years defects may be pointed out; thus there is an exception to what has been said before; where is then the contradiction? Anticipating this, the Author says, there is no contradiction in the text of **the Lord of the Yogis** but that the text of **The Lord of the Yogis** viz. "pledges, boundaries, open deposits" &c. is contradicted by the two texts of **Kâtyâyana**; and intending[4] to point this out, the Author quotes the text of **Kâtyâyana: Atha...varshâṇīti** (p. 17. l. 30) *If ...for twenty years* &c. (p. 44 l. 31). This is what is said. In a document of pledge, as also in a document relating to boundary, after twenty years, no fault could be raised and such a document would be regarded as faultless. Such would be the import of the two texts of **Kâtyâyana**. While contrary to this, under the text of **Yogīśwara** in the case of a pledge, as also in a boundary

The Answer.

1. for कपटकृतलेख्यमपि read कपटकृतलेख्यपूर्वमपि.
2. V. L. निराकरणार्थत्वेन.
3. for साध्यादिक read आध्यादि.
4. for अइष्टमेव तत्र read अपि तु अइष्टमेव तत्रमिति कात्या &c.

even after twenty years a fault may be pointed out. Thus there would be a contradiction. But this should not be so. In the manner presently to be explained, the solution would be in the contradiction itself, so the Author expounds the meaning intended therein by **Uchchyate** &c. ( p. 20 l. 1 ) *The answer is* &c. ( p. 45 l. 1 ) **pratyakṣhabhoge cha sâkrose iti** ( p. 20 l. 4 ) *in possession with notice and protest* ( p. 45 ll. 9–10 ). The context is that the fruits may be followed. The reason here being **abruvata iti vachanâditi** (p. 20 l. 5) *under the text abruvata etc.* ( p. 45 l. 10 ). The meaning is that since the loss of fruit would be of him only who does not protest, therefore, of him who protests i. e. raises a cry, the fruit would verily be. **Pratyakṣhe nirâkrose labhate iti** ( p. 20 l. 8 ) *he succeeds when there is possession without protest* (p. 45 ll. 11–12 ). Even here, the fruit can certainly be followed. Let alone the ownership ; still, in the particular matter, the loss of fruits becomes inevitable. Anticipating this, the Author removes it : **Bâdhamapîti** (p. 20 l. 6) *True* (p. 45 l. 15 ).

*PAGE 16.

To a querry, in which case would there be a loss of produce and where could there be no loss of produce, the Author says, where the produce exists, there no loss takes place **tasya swarûpâvinâśeneti** (p.20 l. 6. ) *it......in the same condition without detriment to its natural state* &c. ( p. 45 ll. 15–16 ). Of *it* i. e. the produce. Where, however, the produce has vanished in specie on account of consumption, there being an absence of the substance itself and in specie, even if the ownership which is based on its relation to the substance be lost, by regard to the text "one in possession without a legal origin, he should punish like a thief", as in the case of property stolen by a thief, the property is restored to the owner and a fine is recovered, similarly the person consuming ( the produce ) should be made to pay to the owner the produce and be punished; thus by the force of this text, from the payment of the price of produce the loss of the produce as such necessarily would follow, so the Author says **Yat punastadutpannamityâdinâ** (p. 20 l. 7) *that, moreover, which arises &c.* ( p. 45 ll. 17–18. )

---

## Yâjñavalkya Verse 25.

The Author points out the difference between an open deposit (*upanikṣhepa*) and a deposit (*upanidhih*): **Upanikṣhepo nâmeti** (p.20. l.17) *Upanikṣhepa is* &c (p. 46. l. 20). This is what is (intended to be) said: what is handed over for protection without disclosing either the form or the quantity is a deposit (*upanidhih*). In the text of **Nârada** from

the use of the expression 'in confidence,' the non-disclosure of the form and the quantity is inferred. **Hânirna bhavati iti** (p. 20 l. 20) *no loss occurs* &c (p. 46. l. 26.) &c. i. e. the meaning is that the loss of the produce does not occur.

---

## Yâjñavalkya Verse 26.

**Vivâdâspadîbhûtam dravyam swâmine dâpayedityanuwâda iti &c.** (p. 20 l. 21). *The amount, the subject of dispute, he should be made to pay to the owner, is an anuwâda &c.* (p. 47 ll. 22–24). The import is that since a rule has already been mentioned viz. "when upon a denial a claim is proved, he shall pay the amount and also an equal amount to the king" **Dandam cha tastamam vivâdâspadībhûtadravyasamam râjñe dâpayediti** ( p. 20 l. 31 )—*as also a fine equal to it i. e. equal to the amount in dispute should he be made to pay to the king* (p. 47. ll. 24–26).

It may be objected: indeed, the rule here is improper, as a rule had already been laid down ( before ) viz. "and also an equal amount to the king" where, as here, a fine equal to the amount in dispute has been prescribed. To this the answer is that in the text 'and also an equal amount to the king' the rule is applicable only to the recovery of debts, and not to all topics. Even assuming it to have a general application, still there is no injunction in the places where the rule occurs, also an equal amount as to the king being a matter of inference, hence there is no impropriety.

It may again be contended: Indeed the rule of 'an equal amount' is not apposite alike in all kinds of disputes, as in disputes regarding a house or the like, it would be impossible to levy a penalty of another house &c. True, that is so. At such a place the fine 'equal to it' means as is prescribed in each such place to be hereafter mentioned, so the Author says **Yadyapi gṛhakshetrâdishwiti** ( p. 20. l. 32 ) *although......in the case of a house, land &c.* ( p. 47. ll. 25–27 ).

It may then be said, indeed, then in those places to be hereafter stated, this same rule is laid down, so that that other would not have the force of a rule; ( to this the answer is ) no ; in the place hereafter to be mentioned, the rule is as regards the nature of the punishment, while here the rule is as to the payment to be enforced in accordance with the fine already incurred ; so, as there is room for a ( distinct ) rule at both places, neither is without ( the force of ) a rule.

It may be said, indeed, how has the expression *Dhik* ( fie or shame ! ) been proved to be a ( kind of ) punishment, and even if it be

proved to be a punishment, whence is the rule regarding that (as a punishment) been obtained? So the Author quotes the text of **Manu** as an authority for both: **Dhigdaṇḍam prathamam kuryâditi** (p. 21 l. 6): *He should punish first with the expression dhik* (fie or shame) &c. (p. 48. ll. 13, 14). Here the words 'first, then, thirdly' and the like mentioned one after the other are indicative of a higher form relatively by regard to those mentioned before from among the forms of punishment viz. *Dhik*, a fine (in money), or a corporal punishment, and not as prescribing a procedure in all offences in the order mentioned viz. first &c. **Navadhâ darṣita iti**, i. e. *indicated to be nine-fold* i. e. in nine varieties i. e. of nine kinds exclusive of the capital punishment which is well known. **Daṣa sthānāni daṇḍasyeti** (p. 21. l. 8). *ten places for punishment* &c. (p. 48, l. 19). In the case of three *varṇas* (orders) i. e. the Kshatriya, Vaiśya and Śûdra, those places (which are intended for (inflicting) punishment, are ten. This is the construction. **Eteshâm cha yannimittamiti** (p. 21 l. 10). *Of these, moreover, by means of*

PAGE 17.* *which* &c. (p. 48. l. 24). Of these *i. e.* from among the belly &c. It has been said that a poor man should be punished by *dhik*. The Author mentions an alternative in the same case. **Karma cha kârayitavya ityâdinâ** (p. 21 l. 11) *or be made to serve on labour* &c. (p. 48 l. 25). as says **Gautama**:[1] **Karmaviyoga** (l. 24) *preventing the deed &c.* (p. 48 l. 30).[2] In the case of a Brâhmaṇa not behaving, i. e. who acts against the law, prevention of the deed, proclaiming the crime &c. should be resorted to.

---

## Yâjñavalkya Verse 27.

While mentioning possession of a particular kind as evidence of ownership, the Author points out the preponderance of title as being a cause creating ownership: **Swatwahetuḥ pratigrahakrayâdiriti** (p. 21 l. 5) *the origin of ownership such as gift, purchase &c.* (p. 49 l. 25). The Author mentions the reason of the relative preponderance of title over possession: **Swatwabodhane bhogasyeti** (p. 21. l. 5) *of possession as index of ownership* (p. 49. l. 27). The meaning is this: Possession as evidence of ownership requires however, gift and the[3] like; while gift

1. Ch. XXII 43-44 Ch. Manu VIII 125,
2. There is a mistake in the printing of the text here. The 26th verse does not end, as shown in the print, at ll. 1-2 on page 17 but it continues in the next line as far as the word कर्तव्यानीति after which word begins Verse 27.
3. 2. as the origine of title like आदि and the oz. inheritance, purchase partition and finding see Mitakshara Gautama.

and the like, do not require possession. Thus, under the maxim, 'of things dependant and not dependant, those not dependant have greater weight,' that which is based on gift and the like preponderates. **Vichhedâparavojzita iti** ( p. 21 l. 22 ) *uninterrupted, without protest* ( p. 50 l. 5 ) **Aparavaḥ** ( *protest* ) i. e. clamour. Without interruption or protest i. e. without break or protest. This is what is ( intended to be ) said : without interruption i. e. unbroken; without a protest i. e. without a hue and cry.

The Author now begins to explain the meaning of the parts of the same text quoted before: **Kwachittuâgamanirapekṣhasyâpîti** (p.21 l. 33 ) *sometime, however,......does not depend upon title* ( p. 50 l. 10 ). **sa punarâgamâdabhyadhika iti** ( p. 22 l. 1 ) *such possession.........even superior to title &c.* ( p. 50 ll. 16–17 ) 'such' is to be understood to be that descending in a line of posterity.

It has been said that ( possession ) as evidence ( of ownership) is independent of title. What sort of independence is that? Anticipating this (question) the Author explains that the independence is of the *knowledge* of the title and not of its *existence*, and so he says **tatrâpyâgamajñânanirapekṣha iti** ( p. 22 l. 2 ) *even then it is independant of the knowledge of title* ( p. 50 l. 18 ). This is what is (meant to be) said: one asserting that there is title expects the actual existence of the title ; he does not expect to have the knowledge of the title as 'here is the title' in the manner[1] as cattle is shown by the horn. It may be asked, what is the evidence for the actual existence where it is neglected? So the Author says **sattâ tu tenaiveti** (p. 22 l. 2) *the existence of title however......from that itself* ( p. 50 l. 19 ). From that itself i. e. from the particular ( kind of) possession itself.

An Objection. Indeed this is untenable, there will then be the fault[2] of mutual dependance. Because, the existence of title is ascertained by possession which has an evidentiary character ; while possession accompanied by title is regarded as evidence after the existence of the title is ascertained.

The Answer. To this the answer is. The ascertainment of title is ( only ) by an inference, as a long-continued possession was not available ; and it is after the ascertainment of

1. The शृंगग्राहिकान्याय see note 4 p. 17 above.
2. अन्योन्याश्रयन्यायः as where things are mentioned as the cause and the effect of each other mutually, thus leading to no conclusion as to which is the cause and which the effect, the above परस्परज्ञानसापेक्षज्ञानाश्रयरूपः of also नौर्नावि बद्धानितरत्राणाय

title that possession is regarded as evidence. The fault of mutual dependence would occur only where the existence of title is determined by regard to actual possession as a means of evidence.

Then if it be asked, what of the statement[1] viz. "the existence of title, however, is deducible from that itself" ? (the answer is) as the ascertainment of title is made by an inference through it, it is to be understood that the use of the expression 'from that itself' is figurative.

In the text[2] viz.'title is superior to possession' two kinds of possession (are to be accepted) as evidence of possession in the view of **Yogîśwara** possession both within memory and immemorial possession. The Author expounds these two separately : **Vinâ pûrvakramâdityetachchetyâdinâ** (p. 22 l. 3) with the expression *excepting where.........descended from a line of ancestors* (p. 44 ll. 24-25). This is what is (intended to be) said: Immemorial possession does not depend upon the cognition of title ; while possession within memory is dependent on the cognition of title. Whence do you get this dependence in one place and independence in another of the one fact of possession on title? Anticipating this question, the Author mentions a reason for its dependence : **Ataścha smaraṇa-yogye kāle iti** (p. 22 l. 4) *Hence also in the case of possession within memory &c.* (p. 50 l. 23). In the case of possession within memory, even when gift, purchase, and the like sources of title exist, and are capable of being evidence, there is an absence of the determination of title as it is not (regarded as) evidence ; and an absence having been established, mere possession even by force not being regarded as evidence it depends upon title.

The Author now mentions the reasonf or regarding in some places possession as independent of the cognition of title : **Asmârte tu Kâla iti.** (l. 5) *In the case of immemorial possession however* &c. (p. 50. l. 27). When there is capacity and (still) want of perception it is *yogyânupalabdiḥ* (i. e. the non-existence of the proper means of the knowledge of title). In the case of time within memory, gift, and the like are inadmissible as evidence and there is an absence of the capacity of perception Therefore it is not possible to decide that there is no title, owing to the absence of the capacity of perception for assessing the means of evidence determining an absence (of title). Thus also possession is not evidence merely when there is a determination of the

PAGE 18*

absence of title, because, the basis itself is loose. In the present case, however, there being an absence of

1. See Mitāksharā Text p. 22. l. 2 ; Eng. M. p. 50 l. 19. 2. Yājn. II. 27.

determination as to the absence of title, there is the absence of the looseness of the basis, and possession which is independent of the cognition of title is evidence of title. This is the meaning:

**Smârte kâle kriyeti** ( p. 22 l. 6 ) *In cases within the memory of man......evidence &c.* ( p. 50 l. 27 ). *Kriyā* ( *evidence* ) i. e. means of evidence. All roots indicating motion also indicate knowledge. The root *gama* indicating motion is used to indicate knowledge. Therefore following (*Anugama*) means certain knowledge. Absence of it means absence of ascertaining it. Whence is such an absence ? Anticipating the question, and with a view to satisfy the expectation, viz. that the absence of a positive certainty as to the non-existence of title was due to the non-existence of proper means of the knowledge of title, the Author explains the expression; 'absence of knowledge' in the text of **Kâtyâyana : Anugamâbhâvâditi** (p. 22 l. 8) *on account of the absence of proof &c.* ( p. 50 l. 38 ). **Yogyeti** ( l. 8 ) *proper &c.* Since, even if there be a continued immemorial possession, it is no proof, and hence **Manu**[1] has generally laid down a punishment for possession without title, so the Author says **Ata eva Anâgamamtuiti** ( p. 22 l. 11 ) *Hence......he who......without title &c.* ( p. 51 ll. 9–10 ).

It may be said: In the passage 'even......for many hundred years,' the word even ( *Api* ) is used in the sense of collection. For according to the *Sūtra*[2] on prepositions "the word *Api* is used to indicate possibility, returning[3] or secession, expectation, collection, censure, blessing, competency or force, ornament and querry". Therefore the following meaning is obtained. He who enjoys possession extending over many years is to be punished. Since a collection can occur only in an enjoyment for several years by one and more than one, not otherwise. Thus the singleness of the person in possession is inferrable from the word *Api*; as also from the singular number indicated in the word *he.* Therefore, if the rule be that one in possession for a long time without a title is to be punished; only one is punishable and not many. And in the case of possession in an unbroken line of ancestors, the persons in possession being many, and there being the absence of such a one in possession the punishment as for a thief can only be for the first person

1. This passage is not found in manu; but it is in the Nārada Smriti. 1. 87.
2. The Sūtra in Panini at I. IV. 96 is अपिः पदार्थसंभावनाऽन्ववसर्गगर्हासमुच्चयेषु. The sūtra as given in the text above is different.
3. i. e. as opposed प्रवृत्ति.

who alone began the enjoyment without title, on account of the fact tha the rule as to possession without title has a reference to the first person so occupying, and the punishment cannot be for the second or the third. Therefore, what has been said in connection with the inference of title from possession viz. that possession is no title where the tradition does not disclose (a beginning into) a title, is improper. Anticipating this objection, the Author says **Na chânâgamantu yo bhunkte ityekava-chananirdeśâdityâdinâ** (p. 22 l. 12). *It should not, however,* be supposed *by the use of the singular number in 'the who enjoys without a title' &c.* (p. 1 ll. 13–14).

Or, the word *api* is indicative of strength, as the sense of force is deducible from the same rule. Therefore it comes to this: He alone is punishable who holds possession without title for a long time. Such a one holding by force is only the first, and not the second or the third. In the case of these two, having possession by tradition the element of force is absent. Therefore the first alone incurs a penalty. Anticipating this objection the Author removes it by **na chânâgamantu yo bhunkte ityekavachananirdeśâdityâdinâ**[1] (p. 22 l. 12). The substance of the Answer is: In the text "In the case of the first acquirer' gift is the (proper) cause (of title); while for the intermediate generations possession with title". Even as regards the intermediate holder possession with title having been laid down as a source of title, and in the clause "he who is in possession without title" the word *he* being in the position of the subject, the singular number is not intended to be emphasised, possession with a title has an evidentiary value. Therefore even in the case of the second or the third persons for a possession without a title a penalty is inevitable, and so in the case of a traditional possession without a title, possession is certainly not evidence of title. Similarly the word *api* is used to indicate possibility, and not collection or force. Therefore this is what comes to be said. Even of one whose possession extends over multi-millions of years and the possession be without a (proper source of) title, a person with such a possession is also punishable, what of one having no title and short possession!

It may again be said: Indeed what has been said that only possession traditionally handed down from time immemorial has an evidentiary value independently of the knowledge of the source of title, is not proper; since in the text[1] 'where possession has been held, even though unlawfully, by the father with his three ancestors, it

---

1. Of Nârada I. 91.

has been stated that whatever has been held in possession even though unlawfully by the father as also held by the three ancestors, in both these cases a restitution cannot take place, a good title may be inferred even for possession for a period within memory, although not initiated by a good title. So the Author refutes it : **Yadapyanyâyenâpi yadbhuktam iti** (p. 18 l. 30). As *to what has been said 'where possession has been held even though unlawfully'* &c. (p. 52. ll. 9–10). Here the expression 'even though unlawfully' demonstrates the evidentiary value of possession without title. 'By the father' has a reference to immemorial time ; (so) possession commencing at a time within memory and having no good origin has no value as a title. So he

PAGE 19*

answers **by Pitrâ saheti** (p. 22 l. 17) *with the father* &c. Here the clause 'what has been held in possession by the father'—is not to be taken separately because by so doing possession by the father being at a time within memory such possession without a lawful origin may be regarded as good title. Whereas, the instrumental here in the expression 'by the father' is used in the sense[1] of accompaniment. Therefore the text viz. where possession of a field or the like is held by the three ancestors along with him without interruption it cannot be taken away from him, being in one entire sentence, and it being impossible to find possession by many persons without the same being for a long time, possession for an immemorial time has the force of title. Therefore there can be no evidentiary force in possession without a lawful origin and within memory.

It may perhaps be said, how do you get at possession at a time beyond memory from the expressions 'three ancestors', or 'possession by many persons' so the Author says **tatrâpi kramâditi** (p. 22 l. 18) *even there through......successive* &c. (p. 52 l. 12).

It may be said: Indeed let possession for a period beyond memory be evidence (of title); even that requires the existence of title. What then of the text[2] "even though unlawfully &c." ? so the Author says : **Annyâyenâpi yadbhuktamityetachcheti** (p. 22 l. 20) *and moreover the text when possession has been held even though unlawfully &c.* (p. 52 ll. 22–24).

Again it may be said, indeed it has been stated that possession for a period beyond memory does not require the knowledge of the origin of title, but that it requires the existence of it; that is inconsistent.

---

1. Cf. सहयुक्तेऽप्रधाने तृतीया २।३।१९.

2. Nārada I. 91.

The Author anticipates an objection, that in the text *"what has been held in enjoyment in continuation by three ancestors without any title &c."* (p. 52 ll. 27–29), the expression 'in continuation' is used to indicate the force of possession as a source independently of title, so he says : **Yachchoktam**[1] **yadvinâgamamityâdinâ** ( p. 22 l. 22 ) *'as to what has been said, what……without title* &c. (p. 52 ll. 27–30). The Author refutes by **Tachchâpyattantamiti** ( p. 22 l. 23 ) *even that without any title whatever* &c. ( p. 52 l. 31 ).

This is the meaning : In the case of possession beyond memory there being absolutely no necessity of the knowledge[2] of the origin of title, even when the knowledge of the ( origin of ) title is entirely absent, a thing which is possessed for a period beyond memory cannot be taken away. But only so much ; and not that even when in reality no title exists in fact, there could be ownership, for thereby there would be a contradiction with what has been stated before. Here the Author states the reason : **Âgamswarûpâbhâva iti** ( p. 22 l. 22 ) *if title itself is not available* ( p. 52 ll. 33–34 ). The context is to be supplied by "since[3] here". **Etaduktârthamiti** ( p. 22 l. 25 ) *The import of ( this ) has been explained* (p. 52 ll. 34–35). i. e. the meaning is that it has been explained as an implication[4] for immemorial time.

It has been said that possession for a period beyond memory not being dependent for a knowledge of ( the origin of ) title, is evidence ( of title ), while that within memory may be admitted as evidence ( of title ), but with the knowledge of the origin of title. Then it would be improper to maintain that ( possession ) within memory is evidence of title, as that depends upon the knowledge of the (origin of) title. So the Author says **Nanu smaraṇayogya iti** ( p. 23 l. 25 ), *it may be said……within the memory of man &c.* (p. 52 l. 37). The Author examines the same by **tathâ hiti** (l. 26.) *For* &c. (p. 52 l. 38). Is the title on which possession depeds reached by another means of proof or no ; and what will become when it exists in one ? Anticipating this the Author mentions a defect in the first by **Yadyâgama iti**[5] (l. 26) *if title &c.* (l. 38.) The meaning is this: When ownership is ascertained by another means of proof alone, possession not being of any use in

1. This word is from the Mitākshara and should have been in bold types in taxt here
2. On p. 19. l. 12. for आगमस्यास्मार्तकालीनोपभोगापेक्षा etc. read आगमज्ञानस्यास्मार्तभोगे अपक्षो etc.
3. for अनियत्त read अत्र-यत.
4. V. L. अस्मार्तकालोपलक्षक &c.
5. for यत्रागम read यद्यागम.

the knowledge either of ownership or[1] of title (and thus) in the case of ownership or title ascertained by another means of proof, possession not being acceptable as a means of proof as it is not capable[2] of creating proof, it is not possible to say that possession which depends upon title is a means of proof. The Author states a fault even in regard to the second[3] **Atheti** (l. 27) *and if &c.* (to p. 53 l. 2.) The meaning is that there is no speciality, as (the origin of) title is not ascertained. The Author refutes by **Uchchyata ityâdinâ** (p. 22 l. 27) *by, the answer is &c.* (p. 53 l. 4). This is what is (intended to be) said : Title is ascertained only by other means of proof. Such specific possession the title of which is so ascertained becomes a source of title later on in another period of time of gift &c. It may again be said, indeed it has been stated that such a title alone establishes ownership, what then (is the use) of such possession ? So the Author says **Avagatopyâgama ityâdinā** (p. 22 l. 28) *a title though proved &c.* (p. 53 l. 6).

---

## Yâjñavalkya Verse 27. (2)

**Vâchikastu Mamedamiti** (p. 23 l. 3) *the vâchika however is—with the words 'it has become mine'* (p. 53, ll. 24-25) i. e. the meaning is with a verbal acknowledgment where an objective recognition takes place in the words 'this is mine' **Tatra niyamaḥ smaryate iti** (p. 23 l. 4.) *In this respect a rule has been laid down* (p. 53 l. 29). 'In this respect' i. e. in the case of a physical acceptance. **Anumantrayet prâṇyabhimṛśediti** (p. 23. l. 6.) " *The consent of sentient beings should be obtained ; non-sentient beings and a maid should be touched* (p. 53 ll. 32-33). The meaning of this : If the thing which is the subject matter of the gift be a sentient being and has the capacity to speak, then the donee should obtain his consent by the words 'you, such and such a one, are mine." He too should say 'I am thine.' If the object of acceptance be a non-sentient being, i. e. incapable of understanding the words addressed, such as, a cow and the like, or even among sentient beings a maiden, both these the acceptor should gently touch. **Tatsahītâdâgamâditi** (p. 23 l. 9) *such a title, with that* &c. (p. 54. l. 8) i. e. by relation to a title with physical acceptance.

---

1. for आगमज्ञाने वान्नु (in 20 p. 19) read आगमज्ञाने चान्नु &c.
2. In l. 21 for आगमस्यैव read आगमे वा.
3. The second alternative i. e. possession is not title.

It may be said, that as title without[1] possession is weaker than title with possession, where a field is mortgaged to one and

PAGE 20

(afterwords) is also mortgaged to another, then if by chance the first be without possession, and the latter has possession, even in such a case title without possession may be regarded as weaker, and in that case there would be a contradiction with the text[2] 'In the case of a pledge, a gift and a sale &c.' Anticipating this, the Author refutes it : **Etachcha dwayorityâdinâ** (p. 23. l. 10) *this however when......of the two &c.* ( p. 54 l. 9) The Author expounds the text[3] "Title is superior to possession &c." by another method. **Athavetyâdinâ** ( l. 11 ) *or again &c.* (p. 54 l. 13). **Eteṣhâm samavâye iti** (l. 12). *where all these exist together* &c. (l. 14). 'Of these' i. e. of witnesses &c. ; co-existence, collection ; i. e. when all exist. **Pûrvakramâdbhogâdvineti** (l. 14) *unless there is possession which had come down from a successive line of ancestors &c.* p. 54 ll. 20-21 ) ; the meaning is that title is superior to possession other than the possession which has come down in a successive line of descent.

The Author points out the potency at times of the possession handed down from ( successive ) lines of ancestors, (even) against title: **Sa punariti** (l. 24) *such, moreover* &c (p. 54 l. 22. )

The Author explains the purport of the second half of the text viz. "In a title also there would be no force" &c. **Madhyame tu bhogarahitâditi** ( p. 23 l. 15 ) *while in the case of the intermediate possession without possession &c.* ( p. 54 ll. 24-26 ). **Kâranam bhuktirevaiketi** (l. 17) *possession is itself the origin* (l. 29). This has a reference to the fourth generation.

---

## Yâjñavalkya Verse 28.

The Author proceeds to expound the law as to fine: **Âgamastu kṛto yeneti** ( l. 21 ) *He who made the acquisition* &c. ( l. 37 ).

It may be said, this is not proper, as in this text there is an absence of the rule as to the exposition of fine. The Answer is, No, it is not so. The first man should set forth ( the sources of title as ) acceptance by gift or the like only. The second may set up a particular possession viz; without a break, without protest and with the knowledge ( of the offence). The third may set up possession handed down from ancestors

---

1. for भोगसहितागमस्य read भोगरहितागमस्य.
2. Yâjn. II. 23,
3. Yâjan. II. 27,

even without the special characteristic of its being in the presence &c. This being the rule in case of a conflict, the rule as to punishment in case of a breach of the above rule follows from the very force of words and so the discussion as to the rule of punishment follows as of course; thus everything is unexceptionable. **Bhogyahānīstayorapīti** ( l. 31 ) *but even these lose the thing possessed &c.* ( p. 55 l. 24 ).

## Yâjñavalkya Verse 29.

**Navârûdhavivâdasvyeti** ( p. 24 l. 7 ) *while a suit was filed against him &c.* ( p. 56 l. 1 ). The meaning of this : By *the son* i. e. the relative of a deceased litigant against whom a suit had been filed. 'That point' i. e. the point under dispute. 'Having proved' i. e. by proof of title. That point, possession will not establish i. e. refute i. e. in such a case possession does not serve as a means of proof.

## Yājñavalkya Verse 30.

**Vyawahartari**[1] **prete vyvahâro na nivartata iti** ( p. 24 l. 9 ) *if a litigant dies the suit does not stop* &c. ( p. 56 ll. 4–5 ). 'does not stop. i. e. does not fall through ; indeed it proceeds on. This is the meaning' **Yathâ hedâbukâdînâmiti** &c. ( p. 24 l. 17 ) *e. g. of the dealers in cattle &c.* ( p. 56 l. 21. ) Persons who, moving from place to place sell horses are *Hedabukas.* This is a well-known word in Gujerath. **Gaṇâschâdhikṛtâ iti** ( p. 24 l. 24 ) *gana is an officer appointed by the king* ( p. 57 l. 1 ) *Ganāḥ*[2] *i. e. Pûgâḥ.* **Sottarasabhyeneti** ( p. 24 l. 25. ) *and his councillors* ( p. 57 l. 7. ) i. e. in an assembly with additional members.

## Yájñavalkya Verse 32

The Author explains the passage 'entered into by one who has no connection' by implying 'one not appointed' **Anīyuktâsambaddhakṛtepīti**[3] (p. 25 l. 11.) *entered into by one having no connection or by one who was not appointed as an agent* (p. 58 ll. 13–14) i. e. no connection on account of his not having been appointed an agent. The meaning

1. There is a mistake in the print. This portion which has been put as under verse 29, should have been under verse 30, as now put in the translation.
2. These terms may be rendered as " societys " or " Associations ".
3. for अनियुक्तासंबद्धकृते इति read अनियुक्तासंबद्धकृतोऽपीति,

is that, not having been deputed, he had no connection with the dispute under considertion.

It may be asked, it has been said above that a transaction entered into by the intoxicated, insane, or the like will not be upheld. There, are the terms intoxicated etc. used by implication ?[1] For a doubt may arise there, is it that a transaction entered into by (persons like) the intoxicated etc. only, as mentioned in this text fails, or is it also that a transaction entered into between a preceptor and a pupil or the like (also) does not stand ? Or, is it that the reference to the intoxicated and the like is not with implication ? And from this if it be suggested that a restrictive[2] rule is deducible viz. that it is only transactions entered into by the intoxicated or the like that would be invalid, the answer is no. Not the first alternative. By the expession 'as also' in the clause "as also that entered into by one who has no connection" a specific rule being deducible viz. that a transaction entered into by the intoxicated and the like only will not be upheld the objection is removed at the very outset. Nor can it be the second—as a specific rule is avoided by the text "between a preceptor and a pupil." So the Author answers **Yattu smaraṇam guroḥ-siṣhya ityâdinā** ( p. 25 ll. 11-12 ) *as to what has been said...between a preceptor and a pupil* etc. (p.58 ll. 15-16). The meaning is this: by stating that transactions entered into between a preceptor and the pupil or the like are not upheld, even transactions other than those entered into by the intoxicated, the insane, and the like are also not upheld, the specific rule adverted to above does not come to be established, the non-completion of the transactions, referred to above, by the intoxicated and the like alone is established, so there is no restrictive rule.

* PAGE 21

The Author indicates the occasion of a dispute between a preceptor and a pupil: **Tathâ hi Śiṣhyaśistiravadheneti** ( p. 25. l. 14.) For, *A pupil shall not be punished corporally &c.* ( p. 58. l. 21.) The meaning of this : The punishment of a pupil is other than a corporeal striking. If it is not possible for the punishment being other than corporeal i. e. by striking, he should be struck with thin pieces of a split rope or of a bamboo. A preceptor punishing or striking with any other thing i. e. other than a split bamboo or rope or with the hand, is punishable by the king.

1. उपलक्षणम्—i. e. is the term to be taken simply by what it denotes or is there any further extension of it ?
2. नियम—i. e. only those transactions which are entered into by the intoxicated and the like fail and none others.

**Bhûryâ pitâmahopâttetyâdivachanâditi** ( p.25 l.17 ). *Under the text 'land which was acquired by the grand-father, &c.* (p. 58. l. 30.) i. e. the text[1]: "Land which was acquired by the grand-father, a corrody, and also chattels ; in these the ownersphip of the father and also of the son is the same". **Sampratirodhaka iti** (l. 20) *while under restraint &c.* (p.*59 l.3*). *Sampratirodhaka*-imprisonsent in a fort etc. by the enemy forces after the entire property is taken away. **Nâkâmo dātumarhati** ( l. 20 ) *is not liable to return if unwilling* ( l. 59 l. 1 ) i. e. in the circumstances mentioned above if he be unwilling i. e. not willing to return the woman's property taken he need not give.

**Gaṇadravyam haredyastu samvidam langhayechcha ya iti** (l. 29) *he who robs the wealth of villagers or transgresses any established usage* &c. ( p. 59 ll. 21-22 ) 'the king should deprive such a one of all his effects and banish him from his realm' is the next half[2]. **Ekam ghnatam bahûnâm chedityâdi** (l. 29) *when one is assaulted by many &c.* (p. 69 l. 2?) 'the fine shall be double of that already mentioned' is the remaining text.[3] **Vyawahâra iṣhyata evetl iti.** (l. 30) *a suit...appears to have been verily ordained* &c. (p. 59, l. 23). For one depriving the gaṇa of its property, the punishment is the deprivation of the entire possessions. Also for many attacking a single individual, the punishment is a double penalty. Both these, from the point of view of a judicial proceeding, are for those who are guilty of the aforesaid offences and thus a cause of action for a judicial proceeding exists.

The Author explains the import of the text of **Nārada**[4] "between one and many etc."

**Bhinnârthairbahubhiriti** (I. 30). *When many have different causes of action* (p. 57, l. 25). The meaning is that one having different causes of action against many cannot include these in one suit, but that these are tried in sucsessive order. The Author concludes **iti yojanīyamiti** (l. 33) *the text should be construed to mean* &c. (p. 59 l. 32). This is the purport: A transaction between an intoxicated person and the like is absolutely inadmissible, while one between a preceptor and the pupil and the like will lie i. e. a in a particular manner e. g. as aforesaid.

---

## Yâjñavalkya Verse 33.

**Yadi na bhâvayati tadâ tatsamam dandya iti** (p. 26 l. 5) *if he does not identify, then he should be fined in an equal amount &c.* (p. 60,

---

1. Yajn. II. 121. 2. Yājn II. 187. 3. Yājn. II. 221.
4 Nārada Introduction. 12.

l. 12). The meaning is that having first asserted (in the complaint) that 'it is mine, if afterwards he does not prove it, he should be punished.

It may be said, indeed wealth lost and recovered being another's must be returned, therefore, the rule that 'lost wealth recovered should be given &c.' is meaingless ; so the Author says **Adhigamasya swatwanimittatwâditi** (p.26. l.6.) *on account of 'finding' being recognised as one of the causes giving rise to ownership &c.* (p.60 ll.14,15.) **Atra Kâlâvadhim wakṣhyatîti** ( l. 7. ) *Here the Author lays down the period of time* &c. (p. 60 l. 16.) Here the rule (laid down) is that at the time of restoring the property lost and recovered, one-fourth of the royal share should be given to the finder. When however an officer of Revenue or Police finds lost property and hands it over to the King, to such a Revenue or Police officer, a fourth of the one-sixth which belongs to the King as his should be given *i. e.* from the one-sixth of the property recovered and not from the royal share. If it were so, the text viz. 'may take one-sixth share of the property &c.' may stand contradicted.

This is the import : **Urdhwamadhigantuschaturthomśo râjñaḥ śeṣham** (p. 26 l. 17.) *afterwards one-fourth to the finder, the ramainder to the King &c.* (p. 61. l. 5) *i. e. after a year*; whether the owner turns up or does nor return a fourth share should be given over to the finder. The remainder goes to the King. There, in apportioning the fourth to the finder this is the difference: if the owner turns up as has been mentioned before, the sixth for the King should be taken out, and from the remaining portion should be taken the fourth part as

* PAGE 22.

the Royal share. * If, however, the owner does not turn up, a fourth of the entire property. Thus the difference here too ( should be noted ) as before. In the clause ' the remainder to the King ' also this is the special rule : When the owner comes, then in accordance with what has been stated before, here too, the sixth and other parts are for the King. If, however, the owner does not turn up, then from the entire property, a fourth having been given to the finder, the King should take the residue. Thus should be construed the text of **Gautama**.

In the term 'a year' in the text of **Gautama** the singular number is not intended, so the Author says **Atra samvatsaramityekawachanamiti** (p. 26 ll. 9, 17.) *Here, by the word 'a year' the singular number is intended* (p. 61 l. 6.) Also in the text 'within a year', by a parity of reasoning, the singular number not being intended, the Author expounds the fourth quarter thereof according to the sense intended **Hareta**

**parato nṛpa ityetadapîti** ( p. 26. l. 18. ). *And even the text 'thereafter the king shall take it'* ( p. 61 l. 8. ).

**Râjâ swâṁśamavatîrya tatsamam dadyâditi** ( l. 19. ) *the King should deduct his due and pay an equivalent* &c. ( p. 61 l. 11. ) His due i. e. the sixth part, having taken (this) away, 'an equivalent'—i. e. as much as was received from the hands of the finder—of that amount the king should give to the owners. There also, he should not pay the interest accuring on it, but the original only, the rule having been laid down, "thereafter the king shall take it". This is the import in short.

This equivalence is by regard to the money in his own treasury and not by including the fourth awardable to the finder, as that is awarded to him as his wages. If the amount of wages is not paid, after the lapse of time, restitution of lost property recovered may not take place and moreover as particularly it has been mentioned "after taking out his own &c.".

---

## Yâjñavalkya Verses 34 & 35.

**Nidhyadhigamo râjadhanamiti &c.** (p. 27. l. 1.) *A Treasure-trove is the property of the king* &c.(p. 62. l. 7.). The meaning of this : Treasure-trove i.e. the finding of a deposit. By this finding is indicated wealth. That wealth is of the king, not of the finder. In the case of a Brâhmaṇa learned i. e. accomplished by the study of the Vedas, the treasure-trove is not the king's wealth, but of himself only. If the announcer i. e. the reporter of the treasure-trove be one not a Brâhmaṇa i. e. other than a Brâhmaṇa, then the person announcing the treasure-trove found gets himself a sixth part; so hold some. The expression 'so hold some' is used to indicate the other alternative rule viz: that a treasure-trove is not the king's wealth, but only subject to a deduction of a sixth portion, along with the one which allows him to take the entirety.

It may be said, indeed, it is not proper to say "if the information is not given and he is found out, the finder should be made to pay a fine" because, the non-knowledge of the king may (happen to) be due to the non-information by the finder of the deposit or by any other, so the Author says : **Anivedita iti kartari nishṭhâ** (p. 27. l. 2.). *The past participle 'anivedita', is used in the active sense* (p. 62. l. 11.) The import is this: If the finder does not become himself the maker of the

announcement or does not cause it to be made, but if the king comes to be informed, as the result of a report given by others then that (finder) should be made to pay it, as also a fine equal to a half.

---

## Yâjñavalkya Verse 36.

It has been stated that if the property is not restored to one who has been robbed of his wealth by robbers, the sin of both of these viz. of him to whom the wealth belonged as also of the thief, accrues to the king. The Author points this out by a detailed analysis **Yadi chorahastâdâdâyetyâdinâ** ( p. 27. l. 14. ) *If after recovering from the possession of the thieves &c.* (p. 65. l. 1. ) **Yathâsthânam gamayatîti** (p. 27. l. 16.) *he shall return it to the owner &c.* (p. 63. l. 7.) i. e. he shall make it over to him whose property it was. This is the meaning.

---

Here end the Special Rules of Procedure

or

Here end the General and *Śpecial Rules* of Procedure.

---

# Chapter III.

## RECOVERY OF DEBTS.

The Author indicates the connection in the context of the former and the later portion of the treatise by **Sâdhâraṇâsâdhâraṇarûpâmîtyâdinâ** ( p. 27. l. 20. ) *In the form of the general and particular &c* (p. 64. l. 3.).

This is the import : In the first chapter the General Rules of Procedure have been stated. In the second chapter have been stated the Special Rules of Procedure. Thus the two chapters are of use for the ensuing portion of the treatise, and thus their connection. Or, the preceding chapter itself consists of general and special Rules for the rule in the texts[1] such as "who shifts from place to place &c." (indicating) the characteristics of a faulty (witness or litigant) is general for all, as also in the text " After discarding all circumvention &c." The rest is particular. Thus with its two-fold character, the preceding chapter

---

1. Yâjn. II. 13.

itself has a connection with what is to follow. Thus it is with this very object that the last chapter has been concluded in the end as having these both.

**Idṛśaṃ ṛṇaṃ deyamityâdi** ( p. 27. l. 23. ) *the kind of debt which should be paid &c.* ( p. 64. l. 11. ) A debt for ( the purpose of ) preserving the family incurred even by persons who are not indepedent must be paid ; otherwise than the above, however, may not be paid. It must be paid by such as the son, grandson and the like, who are liable. When the debtor is a Brāhmaṇa with exhausted means, he should be made to pay by degrees, at instalments, at the criod of an instalment. Sometimes it must be paid with interest. In other places it may be paid without interest. By such a mode it should be paid. Thus in this order Recovery of debts is of seven kinds, five in reference to the debtor and two for the creditor. This is the meaning.

**Ṛṇaṃ deyamadeyamiti** ( p. 27 l. 25. ) *which debt must be paid, and which may not be paid &c* ( p. 64. l. 15. ). The connecting order is 'where' a particular debt should be paid and where not. 'By whom' indicates those who are liable ; 'when,' ( is indicative ) of time, 'in what way' of the mode. Having thus demonstrated in accordance with another Smṛti the seven-fold character of the ( chapter of ) Recovery of debts the Author introduces the passage in the original text **tatra prathamamiti** ( p. 27. l. 26. ) *there—the first &c.* ( p. 64. l. 20 ).

---

## Yâjñavalkya Verse 37.

**Mâsi mâsītyeveti** (p. 28. l. 4.) *every month* &c (p. 65. l. 1.) 'Every month' is repeated (for all). So that every month it becomes two, three, four, and five respectively. The word 'two, three, four, and five' has a *kan* ending, so the Author says **Tadasminvṛdhyâyeti** (p. 28. l. 6.) *the affixes mentioned above have the sense of interest &c.* (p. 65. ll. 45.) The Author describes the nature of the interest mentioned above **Iyancha vṛddhirityâdinâ**[1] (p. 28. l. 9.) *this interest &c.* (p. 65. l. 10.) **Kâyâvirodhini śaśvaditi** (p. 28. l. 12.) *payable constantly and without detriment to the physical health &c* (pp. 5. l. 20. p. 61. l. 1.) 'Constantly' i. e. often and often. i. e. every day.

---

1. Read दिना for दिका.

## Yâjñavalkya Verse 38.

**Same wā Brāhmaṇâdayodhamrṇa iti** (p. 28. l. 20.) *or all Brâhmaṇas and other debtors &c* (p. 66. l. 21.) Here the mention of Brâhmaṇas and the like as debtors, and of the Kshatriyas and the rest as creditors is merely by way of example[1]. The meaning is that irrespective of the higher or lower order one may figure as a debtor or a creditor even in an inverse[2] order.

**Na vṛddhiḥ prītidattânâṃ syâdanâkâritâ kwachiditi** (p. 28. l. 22.) *Unless there be an agreement to that effect no interest shall ever be charged on friendly loans &c.* (p. 66. ll. 25, 26.) The creditor invests at interest with a debtor allowing interest to increase, thus the causal having been formed, the word *Kārită* in the past[3] passive participle form is the result. That too has an आ (ā) as a prefix. That which has not been agreed to is not agreed i. e. not stipulated. In transactions where no interest is stipulated e. g. where an advance has been made with the words 'you may do as you please' there never will be any interest. Even in such a case, after half[4] a year i. e. after six months even if no agreement has been made, the amount begins to carry interest. This is the meaning of this passage.

The mode of increase, moreover, should be observed in accordance with what has been stated before according as it is secured or unsecured by a pledge. **Yastu Yâchitakamiti** ( p. 28. l. 23 ). *He, however, who after taking a loan for use &c.* (p. 66. ll. 28, 29.) What is obtained by a request is a *yâchitaka* ( a thing borrowed for use ), as says **Amara.**[5] **Kṛtwoddhâramadatwâ ya iti** (p. 28. l. 26.) *He who after obtaining a loan without returning &c.* (p. 66. ll. 29, 30) the meaning is that after obtaining a *Yâchitaka* loan. It has been pointed out before that in a friendly loan, after the expiry of a period exceeding half of a year, interest, even if not stipulated, begins to accrue. An exception to that has been stated by **Nârada**, so the Author says : **Anâkâritavṛddherapawâda iti** (p. 28. l. 29.) *an exception to the* ( rule as to ) *unstipulated interest &c.* ( p. 67. l. 10. )

---

1. प्रदर्शनमात्र—by way of illustrating the proposition laid down.
2. i. e. there may be a debtor from a higher order and a creditor from a lower one.
3. i. e. the causal is indicated by इ and the past passive participle is then formed, Read l. 24 as वृद्धिं कुर्वतमधमर्णमुत्तमर्णं प्रयुंक्ते.
4. i. e. as for instance for six months.
5. II. 9-4.

If when a thing was deposited after exhibition of its form or quantity with a man in whom one had confidence, and in the presence of the owner says, 'I shall do business with this, * PAGE 24. and after a time shall repay you a thing of this kind and quantity' and the owner also agrees to it, in the case of such a deposit, no interest runs if not stipulated. This is the meaning. It having been established that at a mere deposit interest does not arise, and also that if any transaction is entered into without an intimation to the owner, it is to be returned together with interest.

'A gift without[1] consideration' e. g. gifts to minstrels, bards &c. 'A gambling debt' i. e. what was won by gambling. 'Commodity' i. e. a saleable article. The meaning and import is, that in transactions other than a deposit, where an oral agreement has been made with the words 'I shall pay' (in the case of) the price of a commodity and the like, the acceptance of these i. e. the price of a commodity and the like being as for another to that extent, is an exception to the rule where interest accrues even when not stipulated.

---

## Yâjñavalkya Verse 39.

**Paśûnâṃ strîṇâm santatireveti** ( p. 29. l. 3. ) *of the females and of beasts progeny alone etc.* (p. 67. l. 20.) 'of females' i. e. of the female slaves and not of the ladies of a family. **Kiyatî parâ vṛddhiriti** (p. 27. l. 5) *what is the maximum limit for the accumulation &c.* (p. 67. l. 25). i. e. what is the highest extent of the increase by interest.

**Etachcha sakṛtprayoge sakṛdudâharaṇe cheti** ( p. 29. l. 17. ) *This moreover . . . . in the case of one transaction and one payment &c.* ( p. 68 l. 25–26 ) i. e. in one transaction of an advance of a debt, once only recovering the amount with interest.

This is the import : In one transaction of a loan, when ten rupees are advanced and interest not having been recovered every month or every year in course of time an over-increase occurs in the interest, then a creditor recovering the original amount advanced together with interest, shall take together with the original, its double *i. e.* an amount limited by twenty rupees. If the same amount ( thus ) doubled remaining with the one to whom it was advanced, as *e. i.* rupees ten

---

1. वृथादानं—i. e. a useless gift.

is advanced to him again as in the first transaction, or is advanced to another man, then it should not be supposed that because it had doubled itself in the past advance, it will not increase in the present transaction as the increase contemplated is only of the amount then advanced. Hence, an increase in two-fold and the like does not take place in the original transaction only; but it should be remembered that in the second and subsequent transactions even the double is surpassed.

**Adhamarṇadeyasya dwaiguṇyâsambhavâditi** ( p. 29. l. 20. ) *and it is not possible that the amount payable by the debtor might become two-fold &c.* ( p. 68. ll. 31-32 ). The impossibility of becoming two fold may be seen as follows: Every month, or every year, on whichever day the interest is paid, there is a break in the increase which had accumulated before that date, and a fresh increase occurs. Thus in reality a fresh transaction takes place, as there is no case here of an advance allowed to increase without a break until it becomes two-fold.

**Sakṛdârhte tu pâṭhe śanaiḥ śanairiti** (p. 29. l. 24.) *where the reading is 'recovered once'...by instalments &c.* (p. 69. ll. 7-8.) If interest recovered once, together with the original amount, is received only once, then it does not exceed the two-fold. Otherwise, when received by instalments it verily exceeds the double. This is the meaning.

**Chirasthâne dwaiguṇyaṃ prayogasyeti** ( p. 29. l. 26. ) *if in a transaction the loan remains outstanding for a long time &c.* (p. 69. ll. 10-11.) *Sthânam* means standing. If a transaction of an advance of a loan contiunes to be stationary owing to the absence of an acceptance of interest every month it becomes doubled.

---

## Yâjñavalkya Verses 40-41.

**Apratipannaṃ sâdhayaṇ râjñâ nivâraṇîya iti** ( p. 30. l. 6. ) *He should be prevented by the king from recovering a debt which has not been acknowledged &c.* (p. 90. ll. 10, 11.). 'Not acknowledged' i. e. admitted. 'Recovering' i. e. taking back. **Pratyudâharṇaṃ boddhawyamiti** (p. 30. l. 12.) *should be regarded as a counter-illustration* &c. (p. 70. l. 23.)

This is the meaning: By the text[1] "if one injured by others in a way which is a violation of the (laws of) *Smṛti* and usage, informs the king,

1. Yājn. II.

that becomes a (fit) subject for a Judicial Proceeding" this is what is (intended to be) said: If one attacked in a manner opposed to the way laid down by the Smṛtis or usage complains to the king, that is a cause of action : This is what has been (intended to be) said by the text "if the debtor complain to the king while the debt is being recovered" : One must not complain to the king, if it be unopposed to the ways of the *Smṛtis* or usage ; if he informs, that information will not become a subject for a judicial proceeeding. Hence also a penalty has been laid down in **Dando dâpyascha taddhanamiti** ( II. 40 ) *he should be fined and made to pay the loan &c.* (p. 69. l. 22). i. e. this is a counter-illustration to that. The meaning is that the king should recover from the debtor in the form of a fine.

* PAGE 25

## Yâjñavalkya Verse 42.

It may be said that here any recovery in the form of a fine is improper, for by the text of the Lord of the yogis 'a debtor should be compelled by the king to pay', what is indicated is the recovery of only a tenth portion from the debtor, and a fifth part from the creditor.

The answer is no, not so. Indeed recovery is indicated; there is no dispute. What then is the object ? The answer is when a visible[1] cause is possible, an invisible one must not be imagined, as the assumption of an invisible when a visible one exists is opposed to rules. Now the visible object is the guilt of the debtor in not paying what was acknowledged, while there is no fault whatever of the creditor, but only inability (to recover). Therefore it is that a penalty from the debtor and costs from the creditor (has been laid down) respectively for guilt and inability ; and thus everything is unexceptionable.

It may be asked, indeed, in the case of an amount acknowledged by the defendant, the mode of recovery as well as the assortment of the fine has been indicated by the text[2] "trying to recover an acknowledged debt." What, however, is the mode of recovery or the rule as to the assortment of fine when the defendant does not acknowledge the amount ? so the Author says **Apratipannârthasâdhane twiti** ( p. 30. l. 25. ) *where the debt is not achnowledged &c.* ( p. 71. ll. 2. )

---

1. दृष्टे सत्यदृष्टकल्पनाया अन्याय्यत्वात्

2. Yâjn. II, 40

## Yājñavalkya Verse 43.

**Karmaṇâpi samaṃ Kuryâditi** (p. 31 l. 5.) *Even by personal labour shall the debtor make good &c.* (p. 72 l. 12.) The order of words is this : whether of an equal or lower caste the debtor shall make good to his creditor even by personal labour; if, however, of a higher caste, he should pay the amount gradually. Of this very verse the Author states the purport: **Uttamarṇena samamiti** (p. 31. l. 5.) even *with the creditor &c.*

---

## Yājñavalkya Verses 45-46.

**Avibhaktairbahubhiḥ Kuṭumbârthamiti** (p. 31 l. 15.) *for family purposes by the many undivided* &c. (p. 73 ll. 12.) Here has been mentioned the debt which must be paid viz. the debt which was (incurred) by many or by each one for family purposes. 'The head of the family should pay' (p. 73. l. 4.) by this is indicated (the one) who is liable. **Tasmin prete proṣhite weti** (p. 31. l. 16.) *when he is dead or has gone abroad* (p. 73. l. 5.); by this is indicated the time. **Tadrikthina** (l. 11) *his co-parceners* (p, 73 l. 6.); here also is the mention of persons liable.

**Yena deyamityatra pratyudâharaṇamiti** (p. 31. l. 16.) *a counter-illustration to the rule as to by whom* &c. (p. 73. l. 7.) In this text[1] of the Lord of the Yogis viz. "A debt which has been incurred for family purposes by the undivided members" has been expounded the point 'by whom" viz. the debt should be i. e. paid by the members of the family &c. who are liable. There even among the members who are liable in particular matters, a debt need not be paid by women &c., and thus the liability to pay as stated before stands countered ; so this is a counter-illustration. This is the meaning.

---

## Yājñavalkya Verse 47.

**Tasya purastâdapavâdamâheti** (p. 37. l. 24.) *He mentions an exception before mentioniug the rule* &c. (p. 73. l. 24.) The meaning is that although the text "by sons and grandsons" occurs in the order of the statement after the text[2] 'contracted for the purposes of spirituous liquor, lust or gambling" still by regard to the sense it must be placed before. This is the meaning.

1. Yājn. II. 45 ; 2. Yājn. II. 47.

The Author mentions the invalidity of the gift made to rogues' bards, wrestlers &c. by **Dhûrte bandini malle cheti** ( p. 31. l. 28. ) *to rogues, bards, wrestlers &c.* ( p. 73. l. 33. ). Its invalidity is on the strength of the text "bears no fruit," and not because of the absence of a visible result. **Madyaśulkadyûtakâmadandâniti**[1] ( p. 32 l. 3 ) *for spirituous liquor, or a śulka or in gambling or for amorous plesures as also a fine* &c ( p. 74. ll. 12-13 ). Here by the expressions 'spirituous liquor,' 'a *śulka*,' or 'a fine,' are indicated amounts spent on these purposes respectively. The connection is that these i. e. the spirituous liquor &c. should not involve sons. The meaning and purport has been made clear in the text itself.

---

## Yājñavalkya Verse 49.

**Mumûrṣhuṇâ pravatsyatâ weti** ( p. 32. l. 15 ) *who was dying or was proceeding on a journey &c* ( p. 75. l. 6. ). What has been acknowledged *i. e.* admitted by a wife who was charged by her husband who was dying or 'proceeding on a journey " *i. e.* intending to go to another country, such a debt must be paid. This is the meaning.

* PAGE 26

It may be said: Indeed when under the text[2] 'A wife, a son " &c. it is demonstrated that a wife is without property, how even under a hundred texts such as "a debt agreed to should be paid by a woman" and the like enjoining a wife to pay, can it be paid by a wife if she is moneyless? So the Author says: **Na chânena vachanena stryâdînâmiti** ( p. 32. l. 20 ) *likewise the text referred to above ... of women and others &c.* (p. 75. ll. 20, 21.)

---

## Yâjñavalkya Verse 50.

**Pauganḍaścheti Śabdyata iti** (p. 33. l. 5) *is called a Pauganḍa &c.* (p. 33. l. 31.) 'Pauganḍa' is another name for a boy. **Swatantraḥ pitarâvṛta iti** (p. 33. l. 5.) *is independent in the absence of parents* (p. 76. l. 32.) 'In the absence of parents' i. e. when there are no parents, he becomes independent even after sixteen years.

It may be said, the rule that in the absence of parents, the independence comes after sixteen years is improper; as, even before sixteen

---

1. for मद्यशुल्कद्यूतकादंडान् read मद्यशुल्कद्यूतकामदंडान्. 2. Manu Ch. VIII. 416.

years if there be the death of the parents independence is attained and then even by one who has not reached the age of majority, a debt may become due payable: so the Author says; **Yadyapi pitṛmaraṇâdurdhwamiti** ( l. 5 ). *although after the death of the parents &c.* ( p. 76. l. 33. ) **Aprâptavyawahâraścheti** ( p. 33. l. 8. ) *has not attained* ( *the age of* ) *majority* &c. (p. 76. l. 35.) If one has not attained the age of majority on account of his not being of sixteen years, even if he be independent he does not become answerable for a debt; this is the meaning.

Since thus one who has not attained the age of majority does not become amenable for a debt, therefore the text next to be quoted should be thus expounded, so the Author says, **Tasmâdataḥ putreṇa jâteneti** ( l. 9. ) *therefore by every son born &c.* ( p. 77. l. 8.). Not that by every son, by merely his being born must a father be delivered from a debt, but by a son who has reached majority by reason of his having reached the sixteenth year, should a father be redeemed from a debt. This is the meaning.

**Na brahmâbhivyâhârayediti** ( p. 33. l. 11 ) one *must not make him recite Vedic texts &c.* ( p. 77. l. 13. ) The meaning of this: 'Brahma' *i. e.* the Veda, 'must not be made to recite' *i. e.* must not cause ( to be taught ) by another. Where *i. e.* in which *Śrāddha* ( with ) the utterance of *swadhā* an offering is made is 'an offering by *swadhā' i.e. srāddha.* Elsewhere than that *i. e.* anywhere excepting the *srāddha,* he must not be made to recite.

This is what is intended to be stated. : At a *srāddha* the recital of the Veda should be caused, if one himself be uninitiated, as one who has been initiated has the right to recite himself. Thus even in the case of one who is a minor has in his capacity as the offerer the right, upon the strength of the consciousness of the capacity of one causing it *i. e.* the recital. Or 'Brahma', means 'Veda'; another i. e. the head priest or the like, who has the right to cause ( the recital. ) should not allow an uninitiated boy to repeat i. e. he should not engage a boy to pronounce the veda elsewhere than in the offering of the *swadhâ.*

**Sambhûyasamutthâneneti** ( l. 13 ) *Living jointly in a body &c.* ( p. 77 l. 17. ) i. e. all together without the allocation of shares. It has been stated, when undivided they should pay off the debt jointly in a body. The Author states the purport of this by **Guṇapradhânabhâveneti**

(l. 13.) *according to qualifications* &c. (p. 77 l. 17.) **Pradhânabhûto** (l. 13.) *the manager* ( l. 18 ) i. e. the head should pay; this is the meaning.

**Ata Urdhwaṃ pituḥ putrâ iti** ( l. 14. ) *therefore when the father is dead, the sons* &c. ( p. 77 l. 19. ). Since a debt must be paid off by the sons and grandsons, therefore after the death of the father the sons divided or undivided should pay. The Author mentions the mode of payment of debt by the undivided sons **Yastâṃ wodwahate dhuraṃ** ( l. 15 ) *one who holds the lead* ( in the family ) &c. ( p. 17 l. 21. ) The purport is that among the undivided he who bears the yoke i. e. the burden of the family should pay. Here in the expression 'or that', the word 'or' is used in the sense of 'only'.

The Author states the mode of the payment of a debt by the undivided : **Yathâṃśata iti** ( l. 15 ) *according to their respective shares* &c. ( p. 77 l. 16. ) **Atra cha yadyapîti** ( l. 15 ) *here moreover, although* &c. ( l. 21 ). Here i. e. in the text[1] "the debt should be paid by the sons and grandsons". **Atra vibhâvitamiti aviśeṣhopâdânamiti** (l. 18) *Here from the general use of the term* proved &c. (p. 77 ll. 29–30). Here from the use of the term 'proved' generally in the text of Bṛhaspati, and in the text of the Lord of the Yogis &c. "the debt should be paid by the sons and grandsons, when established by witnesses in the case of a dispute" the expression 'established by witnesses' is indicative of some evidence ; and, therefore, the meaning is that a debt established by any means of proof must be paid off by the sons and the rest. Thus, therefore, the purport is that there is no conflict between the texts of the Lord of the Yogis and Bṛhaspati,

PAGE 27,*

---

## Yājñavalkya Verse 51.

**Ṛṇâpâkaraṇe ṛṇî tatputra iti** (p. 33. l. 21.) *In the discharge of a debt, the debtor his son &c.* (p. 78. l. 1.) 'Debtor' i. e. one taking a loan.

It may be said : Indeed it is sufficient (to mention.) 'the heir who takes the heritage', (and) 'the heir who takes the women' need not be mentioned, as his women are part of his heritage (as they are) in the form of his property. So the Author says : **Yoṣhitovibhâjyadrawyatweneti** (p. 33. l. 29.) *as the woman is indivisible property* &c. (p. 78. l. 27. ) This is the meaning : Even though a woman is ( regarded as )

---

1. Yâjn. II. 50.

property, still that cannot be designated as heritage, for among the people, the term heritage (*ṛktha*) is employed only in regard to property which is capable of a division, while a woman is incapable of a division.

Anticipating an inquiry as to when 'these' i. e. the heir taking the heritage and others co-exist i. e. happen to be together, in which order are they to be made to pay the debt, the Author states that they should be made to pay in the very order in the text viz. "The heir who takes the heritage should be made to pay the debt &c." so he says **Eteshâm samavâya iti** (p. 34. l. 1.) *when these co-exist* &c. (p. 78. l. 27.) When there is co-existence of the heir taking the heritage and others then (alone) can there be the thought about the order. But that co-existence itself cannot be. Anticipating this, the Author says, **Nanu eteshâm iti** (l. 2.) *Indeed of these &c.* ( p. 78. l. 31. ) The Author demonstrates the very absence of co-existence : **Na bhrâtaro na pitara iti** (p. 34. l. 2.) *not brothers nor the paternal ascendants &c.* (p. 78. l. 32.) as **Manu**[1] **has** demonstrated that " Not brothers, nor the paternal ascendants are entitled to take the heritage, but the sons alone are entitled to take the heritage of the father". The meaning is that while the son is living, it being impossible for any other to take the heritage there cannot be co-existence of a taker of a heritage and a son.

It may be said, indeed, let there not be a co-existence of the taker of heritage and a son, (but) the taker of a woman and of the taker of the heritage may exist together : Anticipating this the Author maintains that as there cannot also be a taker of the woman, and so a co-existence of these is not possible, so the Author says, **Yoshidgrâhopi nopapadyata iti** (p. 34. l. 30.) *it is also not possible to find one 'who takes a wife'* (p. 78. l. 35). Here the reason is **na dwitiyâscheti** (l. 3.) *nor is a second &c* (p. 78. l. 36.) The meaning is that there cannot be a second husband ; there cannot be one to take a woman.

In the text "the son, when the parental estate has not gone to another," it has been stated that the son should be made to pay the debt. Even this direction is profitless, so the Author says **Tadṛṇam putro dâpya iti** (p. 34. l. 4.) *that debt the son should be made to pay &c.* (p. 78. l. 37.) There the reason is **putrapautrairiti** (l. 4.) *by sons and grandsons &c.* (p. 78. l. 38). The meaning is, that this same sense having been propounded in (the text) "the debt should be paid by sons

1. Manu. IX. 185.

and grandsons," it is tautologous, and its repetition is improper. In the passage "the son when the parental estate has not gone to another" the adjectival clause 'when the parental estate has not gone to another' has been used; that also is meaningless; so the Author says **Ananyāṣrtadrawya iti** (l. 5.) *when the parental estate has not gone to another* (p.79. l.1.) There the Author explains the theory **putre satīti** (l. 5) *when the son exists* (p. 79. l. 3). The meaning is that when the son is existing, parental wealth not devolving on any other, the qualifying clause for a son viz. when the estate has not gone to anthor, is useless.

The Author points out a fault: even assuming that the property goes to another even when the son exists **Sambhave Cheti** (l. 6.) *even if it were possible &c.* (p.79 l.3.) This is the import: When even when the son is living, the devolution of the heritage to another becomes possible, the sons should not be made to pay. But when the estate has not gone to another, the son takes the heritage himself and then the son should be made to pay the debt; and then the adjectival clause 'when the estate has not gone to another' intended to convey this meaning, comes to be with a purpose. This is the point in this view.

Then it would come to be said that the cause of the obligation for the payment of debt is the taking of the heritage and not sonship. Thus this import comes to be established: He who takes the heritage, should be compelled to pay the debt. This import having come to be expressed by the text "He who takes the heritage must pay the debt", a statement again in the text viz. "a son, when the estate has not gone to another" is improper and so the Author states an objection to the fourth quarter of the original text **Putrahīnasya ṛkthina ityedapīti** ( l. 6. ) *of a sonless man those who take the heritage even this* &c. ( p. 79 l. 5. ).

The Author expounds the import of the objection. **Putre satyapīti** ( p. 34. l. 1 ) *even when the son exists* &c (p. 79 l. 7). Therefore even while the son is existing, one who takes the assets has to pay the debts, how much more then when the son does not exist must one who takes the heritage pay the debts. Thus when by the *a fortiori* reasoning itself this has become apparent from its very meaning, this direction is meaningless. Anticipating such an objection, the Author refutes it: **Atrochyate ityâdinâ** (l. 8) *to this the answer is* &c. ( p. 79. l. 9. ) what has been said, in the objection that it is impossible for another to take the heritage when a

son exists, the Author says **putre satyapi anyo ṛkthagrâhî sambhavatîtyâdinâ** (l. 8.) *it is possible that another may take the* * PAGE 28. *inheritance even when the son exsits &c.* (p. 79 l. 9.) The Author mentions a reason for the non-devolution of heritage on the impotent sons and the like : **Tathâ cha Klîbâdînanukramyeti** (l. 9) *moreover commencing* (*in order*) *with the impotent and others* &c. (p. 79. l. 13).

The Author mentions the possibility of one taking a wife : **Yoṣhidgrâho yadyapîti** (p. 34 l. 12). *although ... for one to take the wife* &c. (p. 79. l. 20). This is the import : Owing to the prohibition in the *Śâstra* of another husband, although there cannot be a second husband for women according to the *Śâstra*, still it[1] being possible for one infringing the Śastra to take a wife (of another), such a one is liable to discharge the debt of her husband.

Let such a one be possible who by taking another's wife infringes the Sāstras, still according to the characteristics given in another Smṛti, there being many varieties of these, and there being no[2] specific rule, is it that all persons taking a wife are liable to pay the debt ? Anticipating such a question the Author states a rule **Yaśchatasṛṇâmiti** (l. 13) *of the four kinds* &c. (p. 79 l. 23). The four-fold division of *Swairiṇi* and the three-fold division of *Punarbhus* (has been laid down). Among these only the first and the last kinds of men taking another's wife are liable for the payment of debt.

All this the Author demonstrates by means of the texts of **Nârada: Yathâha Nâradaḥ Parapūrvâḥ striya ityâdinâ** (l. 14) *as says* **Nârada**...*wives*...*who had previously belonged* to another...&c. (p. 79 l. 25) of those who had another husband ; of such kind. **Devarâdînapâsyeti**[3] (l. 21) *leaving aside her brothers-in-law and others &c.* (p. 80 l. 9) i. e. leaving aside her brothers-in-law and other nearer relations who were eligible for the *levirate*. **Prāptā deśâditi** ( l. 22 ) *having come from a* (*foreign*) *country* &c. (p. 80 l. 11). The meaning of this : One who having come from a foreign country i. e. another region and has been purchased with money, such a woman ; or being oppressed by hunger and thirst has betaken herself saying 'I am thine', such a one has been mentioned as the fourth (Kind of) *Swairiṇi*. **Antimâ Swairiṇinâmiti**

1 For तथा शास्त्रनिषिद्ध &c. read तथापि &c.

2 For ... दनियमने read ... दनियमेन in l. 6. p. 28.

3 This should have been in bold type in the text, as it is from the Mitākshara.

( l. 33 ). *the last of the svairiṇis &c.* ( p. 80 l. 14 ) i. e. one who is the last among the *swairiṇis*, as also one who is (mentioned) first among the *Punarbhus.* One to whom these two resort, that one should discharge the debt contracted by their husbands. This is the construction. **Rṇam wodhuḥ sa bhajata iti** (l. 27) *he shall have to pay the debt of her husband* &c. *Wodhuḥ* (p. 08 l. 24) i. e. of the husband.

In the text "The son, when the parental estate has not gone to another" the mention of the son[1] is with a view to demonstrate that in the absence of the one who takes the heritage and the one who takes the wife the debt should be paid by the son, and in this order, and not with the object of indicating the liability of the son in the matter of discharging a debt ; for, thereby there would be (the fault of) tautology, so the Author says, **Putrasya Punarwachanamiti** ( l. 29 ). *moreover, the repetion of the word putra &c.* (p. 80 l. 6).

Again the qualifying expression "when the parental estate has not gone to another" is significant ; so the Author says: **Ananyâsritadrawya iti** (l. 29). By the expression 'when the estate has not gone to another, it is intended to lay down that for discharging a father's debts a blind or a deaf or the like son is not liable, and so the expression 'if the estate has not gone to another' has a significance.

This is what is ( intended to be ) said : The blind, the deaf, and the like are those (in whose case) the paternal estate goes to another, as owing to the defect of blindness and the like they are unfit to take a share in the paternal heritage, while sons not[2] blind and the like are those (in whose case) the paternal estate has not gone to another, as they are capable of taking a share in the heritage ; therefore the blind sons and the like, because the paternal estate has gone to another, are not liable to pay the father's debt ; while those who are not affected by the defect of blindness or the like are liable for discharging the paternal debt, and so the qualifying clause 'when the paternal estate has not gone to another' has a significance.

The Author states the meaning of the expression "of a sonless man, those who take the heritage" as is consistent with what has been established, **Putrahînasya rikthina ityetadapiti** ( p. 34 l. 30 ), *the expression "of a sonless man, those who take the heritage"* &c. (p. 80 l. 3). In

---

1 For पुत्रग्रहण रिक्थयोषिद्राहयोरभावे read पुत्रग्रहणं रिक्थयोषिद्ग्राहयोरभावे &c.

2 On p. 28 in l. 20 add after ग्यत्वात् the following :, अंधादयः, पुत्रा अनन्याश्रितद्रव्या अंधादिदोषराहित्येनांशग्रहणयोग्यत्वात् &c,

the absence of a son and a grandson, a great-grandson also, if he takes the heritage, (then) he is liable to discharge the debt of the great-grandfather ; otherwise, in the absence of succession to the heritage, a great-granddon is not liable. This is the meaning.

The meaning in subtance is that by demonstrating the liability of the great-grandon taking the heritage to pay the debts, the expression 'of a sonless man, those who take the heritage' has been with a purpose.

The Author now begins to expound the expression "of a sonless man, those who take the heritage" by another method: **Yadwâ Yoshidgrâhâbhâva iti** (p. 35 l. 1) *or, failing him who takes the wife etc.* (p. 81. l. 28). This is the meaning: In the absence of one taking the heritage, one taking the wife should be made to pay the debts ; in his absence, the son, when the estate has not gone to another, should be made to pay ; thus has been stated in the text ending with "or, the son when the estate has not gone to another". Now it is being stated that in the absence of a son, the one taking the wife must be made to pay the debt: **Putrahinasya rikthina ityaueneti** ( p. 35 l. 3. ) *in the passage 'of a sonless man, he who takes the heritage' &c.*, (p. 81 l. 5). According to this view the term *rikthinaḥ* is in the ablative case, so that the meaning is that the debt should be caused to be paid from the heir. Indeed here the text is 'the heirs of the sonless' and not 'one who takes the wife of a sonless man', therefore how of this interpretation viz that in the absence of a son one who takes the wife should be made to pay? So the Author says **Rikthaśabdena Yoshideveti** (l. 3). *by the word riktha wife alone &c.* (p. 81 16.) **Sa tasya harate dhanamiti cheti** (l. 4). *he...takes his wealth &c.* (p. 81 l. 7). Here by saying that he who takes one's wife also takes his wealth, no rule has been laid down. But, it means, that since wives themselves are wealth therefore one who takes the wives gets the designation[1] of the taker of wealth. This is the meaning.

**Iti parasparaviruddhamiti** (l. 5) *are mutually contradictory* &c. (p. 81. l. 12). Here how many kinds of contradictions (are *PAGE 29 there)? For, one (rule as to the) order regading payment is that in the absence of one who takes the wife, the debt should be discharged by the son, under the texts "as also he who takes the wife" and ending with "the son, where the estate has not gone to another." While by the text "of a sonless man &c.," in the absence of the son, one who takes the wife must pay the debt, and

1 व्यपदेश character.

thus the order of payment appears to be reverse of the one mentioned above. Thus this mutual contradiction as to the order (of payment) is one case of contradiction. When the taker of the wife and the son both exist, then when both are existing, the liability as to the payment of debts having been indicated by regard to the absence, (of either), in the absence of this element indicating the liability, the position would be that he has to pay the debt and thus there neither would be contradiction of the texts laying down the necessity of paying debts such as the text[1] "When, however, there are neither sakulyas, nor relatives, nor the kindred then it should be paid to the twice-born. On failure of these, it should be caste into the waters" and like others. Thus this is another contradiction. Both these (contradictions) are indicated by the expressions " mutually contradictory " and "when both exist"

The Author refutes the objection stated before by **Naisha dosha iti** (l. 5.). *there is no fault* here *&c.* (p. 81 l. 13). There are many (kinds of) takers of wives. Among these are two categories : One who takes the last *swairini*, one taking the first *punarbhu*, and one taking a wife endowed with a rich heritage ; this is one category ; and another category is of one taking the wife of one devoid of issue or wealth ; in such a state, in the absence of the taker of a wife of the first category, the son is made to pay the debt, under the text "the son, when the estate has not gone to another" so the Author says, **Antimaswariṇigrâhina iti** (l. 6) *those who take the last swairiṇi* &c. (p. 81 l. 14).

By the text "of a sonless man, those who take the heritage" it has been laid down that in the absence of the son any one or the next in order i. e. one of the wife-takers shall be made to pay the debt, so the Author says **Putrâbhâveti nirdhana iti** (l. 7). *in the absence of a son... having no property* &c. (p, 81 ll. 1576). This is what is (intended to be) said: It is not a general rule stated that in the absence of one who takes the wife the son must be made to pay, or in the absence of the son, the one who takes the wife must be compelled to pay, by which there will be a contradiction. But among the wife-takers, in the absence of a wife-taker of the kind referred to in the two categories, the son must be made to pay, and in his absence, the specially designated wife-taker as stated above must pay. Thus by a resort to a middle category between the two, there is no contradiction either in regard to the order (of liability to pay), nor will there be any opposition with the context of

1. Nârada I. 113.

texts laying down the payment of a debt as an obligatory duty, since what is necessary may be paid[1] by still another, and so there is no contradiction of any kind. Thus apart from the commentary given above the following is established as the meaning of the text "of a sonless man, those who take the heritage", viz. in the absence of one who takes the wife, the son (must pay) the debt, and in the absence of him, the wife-taker must be compelled.

Now the Author cites in support, the text of **Nârada: Etadevoktamityâdineti** (l. 7) *this very thing has been said &c.* (p. 81 l. 17). The Author expounds the text of **Nârada** *Dhanastrīhari &c.* by **Dhanastrîhâriputrāṇaṃ samawāya iti** (l. 8) *of the three i. e. he who takes the wealth as well as he who takes the wife and (lastly) the son* &c, (p. 81 ll. 17–18.)

The Author begins to give another exposition of the text *Putrahīnasya rikthinaḥ* **Putrahīnasya rikfhina ityasya anyā vyâkhyeti** (l. 13). *the clause "of a sonless man those who take the heritage (should be made to pay the debts)". has another explanation.* With a view to state that very exposition, the Author states someting which appears from the meaning itself by way of a supplementary[2] anticipation **Etena strihâri putra iti** (l. 13) *by this...those...who take the wife...another son* &c. (p. 81 l. 34.) This is the meaning : Persons taking the estate or the wife, and sons mentioned in the texts commencing with "the heir who takes the heritage should be made to pay the debt" and ending with "the son when the parental estate has not gone to another" should be compelled to pay the debt. For whom should they be compelled to pay the debt ? to such a question, (the answer is), for the creditor. When he is not existing, for his son, or for his grandson. This is the conclusion following from the very context.

Having thus mentioned the conclusion following from the context, the Author now brings in the part 'of a sonless man the heirs taking the estate, &c., by **Putrādyabhāva iti** (l 1 4) *in the absenee of the son and the rest* &c. (l. 36). In this view *rikthinaḥ* is (to be taken) in the genetive case. Intending to expound this very meaning, the Author says **Putrādyanwayahīnasyeti** (l. 15) *of one who has no son or other issue* &c. (p. 82 l. 3). For him i. e. the cognate or other relation to whom the inheritance belongs, the takers of the wife and others mentioned before should be made to pay the debt. This is the meaning.

---

1 In l. 17 for अवश्यमनन्यत्वनैव read अवश्यमन्यतमेन.

2 आकांक्षा one of the three terms without which the idea intended to be conveyed will not be complete; the other two are योग्यता and सन्निधि;

**Brâhmaṇasya tû yaddeyamiti** ( l. 16 ). *whatever debt is due to a Brāhmaṇa &c.* ( p. 82 l. 8 ). A debt which is payable to a Brāhmaṇa having issue, when the Brāhamaṇa is not existing, should be made over to his agnatic[1] relations, in their absence, to the cognate kindrd; this is the order of construction. *Sakulyāh*, agnatic relations i. e. belonging to the same *gotra* ( or gens ) are *sapiṇḍas ; Bandhavaḥ*[2] cognate kindred—not belonging to the same gens-are *sapindas* or kindred.

In answer to an inquiry, in the absence of sons and other issue and in the absence of kindred entitled to take the heritage, for whose behalf should these aforesaid persons be compelled to pay the debt, the Author again also points out the text of **Nârada, Yadâ tu na sakulyâḥ syuriti** ( l. 18. ) *when, however, there are neither sakulyas* &c. (p. 82 l. 87. )

The two texts of **Nārada** have thus to be adjusted.

In support of the rule stated in the texts commencing[3] with "these i. e. the takers of wealth or of the wife and the sons" and ending with "in their absence his sons and the rest &c." the Author cites the text of **Nārada** viz. the first half of the verse "whatever debt, however, is due to a Brāhmaṇa &c." **Brâhmaṇasya twiti** (l. 16 ).

PAGE 30*

In support of the rule brought out by the texts commencing with "in the absence of sons &c. to whom should they be made to pay" and ending with "to his heirs must (these) be compelled to pay", the Author strengthens the conclusion by means of a verse and a half by the method of agreement and difference by the text **Nirwapet tatsakulyeṣhuityâdinâ** ( l. 17. ) *shauld be paid to his sakulyas &c.* ( p. 82. l. 7.); there he should make it over ; this is the construction, since it has been stated by the affirmative method viz. in the absence of the issue, it should be made over to his sakulyas. 'When, however, there are neither *sakulyas*' is by the method of difference, since, by stating that in the absence of the

1 The *Sakulya* is used in reference to those cognates or *Sapindas* who belong to the same *gotra*.

2 *Sapindas* are those congnates who possess in their bodies *pindas* or particles in common with the propositus. They may belong to the same family or *gotra* as that of the propositus e. g. a son's son, or to a different family e. g. a daughter's son; see Yājn. I. 52 and the Mitākshara thereon and the note on *Sapinda* in Appendix B to Gharpure's Hindu Law.

3 i. e. at p. 35 ll. 13-15 of the Mitākṣharā.

*sakulyas*, it should be paid to the twice-born, when the *sakulyas* are existing the payment of the debt to the twice-born and the rest has been negatived, and thus what has been stated before has been negatived.

---

## Yájñavalkya Verse 52

**Adhunâ Purushaviśesha iti** ( p. 35 l. 20 ). *now ... ... ... from particular persons &c.* ( p. 82 l. 16. ) By the last exposition of the text "of a sonless man, those who take the heritage" this is the conclusion established: Of a creditor who is without a son or other issue, he who is an heir i. e. the kindred and the rest, to such a one, these mentioned above should be compelled to pay the debt. By this, in accordance with the rule 'one should accept[1] the heritage as well as the debt and none else' for any particular person who is incapable of taking the heritage, the taking up of a debt also necessarily stands prohibited. From this conclusion, on the occasion of prohibiting the recovery of a debt for particular persons, the Author mentions other prohibitions also. This is the meaning.

**Api tu Pratishiddham Sâdhâraṇadhanatwâditi** ( l. 14. ) *nay it has been even prohibited as there is [the community of wealth &c.* ( p. 82. ll. 21-22. ) Those who had the commonly acquired wealth i. e. the brothers &c. The state of these; that condition and the like of these. Thus is the (solution of that) compound.

It has been stated that before partition there cannot be a surety liability between a couple excepting by mutual consent. The Author anticipates an objection to this **Nanu dampatyoriti.** ( l. 29. ) *it may be said......between the couple &c.* ( p. 82 ll. 30-31. ) The reason for this: **Tayorvībhâgâbhâveneti** ( l. 29. ) *as there is no partition between them &c.* ( l. 32. ) The meaning is that as there is no partition, the word 'partition' in the expression 'before parttition' is useless and the qualification is meaningless. The Author refutes by admitting (as to) the half, **Satyamityâdinâ** ( l. 30. ) *true &c.* ( l. 35. ) Thus, on the strength of the rule as to the joint right regarding the rites in connection with the preparation of the *Śrauta* and *Smârta* fires, the Author states the conclusion established from the context: **Ataścheti** ( p. 36 l. 4 ) *therefore &c.* ( p. 83 l. 17. ) *A Pūrta* is an act which consists of digging &c. says the **Amara**[2].

---

1 V. L. रिक्थेयर्णं—The person taking the heritage should alone be amenable for the debt. 2 II. 7-28.

The Author states the same thing regarding the results of meritorious acts : **Tathā puṇyânâm iti** (l. 36). *moreover......of meritorious* &c. (p. 83. l. 21.) **Divijyotiriti** (l. 5) *body in the heaven* &c. (p. 83. l. 22) The meaning of this: *In the heaven* i. e. in the heavenly region *Imperishable* i. e. not perishable until the exhaustion of the meritorious act which[1] is the cause of it. *Jyotiḥ* i. e. begin a body resplendent[2] with lustre ; the Author brings out this meaning as the crux. **Yeṣhu puṇyakarmaswiti** (l. 16.) *in reference to those meritorious acts &c.* (p. 83. l. 24.) As on the authority of the rule as to this joint right in the consecration of fire there[3] is their jointness in the (enjoyment of) heaven and the like results proceeding from the fire consecrated thereby, and also an absence of separation[4], so even as to jointness of property, on the authority of injunctive texts maintaining their jointness, their jointness being established, the couple have a joint right in regard to the sons &c. resulting from wealth. And as the ownership of wealth being of both together, wealth also would be indivisible. Therefore what has been said even regarding wealth in the case of a couple before partition, that there cannot be suretyship or the like before partition, all that is irrelevant as before on account of the meaningless qualification.

Anticipating such an objection the Author says : **Nanu drawyaswâmitwepi sahatwamuktam iti** (p. 36. l. 81.) *It may be said that the jointness has been laid down even in connection with the ownership over wealth &c.* (p. 83. ll. 26-27.) The Author points out a text indicating even ownership over wealth to be together. **Drawyaparigraheṣhu Cheti** (l. 8.) *also with respect to the acquisition of property &c.* (p. 83. l. 28.) The following is the meaning of this text of Âpastamba[5] as intended by the objector. From the acceptance of the hand follows the jointness. The jointness of the couple is also as regards the acceptance as to the earning of wealth. The Author demonstrates this : **Na hi Bharturiti** (l. 8.) *not......during her huband's &c.* (p. 83. l. 30.) When the husband is on a journey abroad, they do not characterise that as a gift by the wife on a special occasion[6]. The meaning is that their jointness having been ordained even as to the ownership of wealth, there is no separation as to wealth as (there

---

1 In p. 33. ll. 19-20 for कारणभूतं सुकृतनाशपर्यंतमपि नश्वरं read कारणभूतसुकृतनाशमाविनश्वर
2 There is a mistake in the print. It should not be तेजः प्रधानं but तेजःप्रधानं
3 In l. 21 for सहाधिकारविधिबलात्साध्याग्नि &c read सहाधिकारविधिबलात्तत्साध्याग्नि :
4 For विभागाभावश्चत्तर्हि read विभागाभावश्च तर्हि. 5. V. L. आभिमतोऽर्थः
6 V. L. एवं द्रव्यस्वाम्येऽपि &c.

is none ) in the acts to be accomplished by the *Śrauta* and *Smârta* fires.

PAGE 31* This text ordains only an ownership of wealth. There is no mention of jointness, by which an absence of partition could be inferred. Thus by the method of admitting[1] a half, the Author refutes it: **Satyam dravyaswâmitvam ityâdinâ**[2] (1. 9.) *true, ownership......over wealth &c*, (p. 83. l. 30.)

The following is the meaning, in accordance with the established conclusion, of the text 'And with respect to the ownership of property': The couple has a joint right even as regards the acquisition of wealth. This jointness, however, is ancillary, not principal. For, as in the case of the consecration or the like, in the absence of either the husband or the wife, the very nature of the consecration remains unaccomplished, such is not the case regarding the acquisition of wealth. But the husband is the acquirer, and the wife preserves what is acquired, and thus the acquisition and preservation are done by both, and thus on account of the co-operation of both, there is jointness also. Thus where there is jointness[3] viz. in consecration and the like there is ownership also. And, thus where there is jointness there being ownership, here also, there being jointness in the acceptance of propety there is ownership.

The Author states this deep[4] meaning **Yasmâddrawyaparigraheshu Chetyukteti** (1. 10.) *Since after stating with respect to the acquisition of property &c.*(p. 84. l. 1.) This is the import : Jointness has not been laid down ; but it is accepted among[5] the people, as the ownership is, on account of their being together. If now, you say that in regard to wealth acquired even before marriage, the ownership is of the man alone, and that over that acquired thereafter, of the husband, and the wife, that also is not so, for if that were so, there would not be ownership also of son over wealth paternally acquired before his own birth. So enough of more digression. **Anyathâ steyaṃ syâditi** (l. 12.)

---

1. *i. e.* the method of admitting a portion and maintaining the objection as to the remainder. The meaning is further made clear by the Author by demonstrating that, as is the case with consecration and the like so also in regard to the acquisition of property, there is co-ownership of the husband and the wife. See also Bālambhaṭṭi Vol. II. p. 70.

2. There is a mistake in the print : for त्वादिना read त्यादिना.

3. V. L. एवं यत्राऽऽधानादिषु सहत्वं तत्र स्वत्वमेव ।

4. गूढाभिसंधिः 5. लोकसिद्धम्.

*Otherwise*[1], *it would be theft* &c. (p. 84, l. 7.) Otherwise i. e. in the absence of ownership.

---

### THE LAW OF SURETYSHIP.

## Yâjñavalkya Verse 53.

**Urwarâprâyabhûriti** (p. 36. ll. 19-20.) *A very fertile land* &c. (p. 84. l. 23.) "*Urvarâ i.e.* fertile in all crops" vide **Amara**[2]. The word 'default' also follows (the expression) 'of the last, even the sons'; so the Author says: **Vitatha ityeveti** (l. 23.) *by default* &c. (p. 84. l.32.)

The Author explains the very falsehood by **Sâṭhyeneti** (l. 23.) *fraudulently &c.* (l. 33.) When either wickedly or owing to want of wealth the debtor does not pay the debt of the creditor, then the surety for payment should be made to pay; this is the meaning.

---

## Yājñavalkya Verse 54.

The sons of a surety for payment should pay only the original principal. So the Author says, **Te cha mûlameveti** (l. 31.) *And these too......only the principal amount only &c.* (p. 85. l. 15.) The original itself is the amount. The Author expounds the text of **Vyāsa** by **Prâtibhâwyawyatiriktamityâdinâ** (l. 32.) *excepting that which was incurred under a suretyship &c.* (p. 85. l. 20.). Here the expression 'excepting that which was incurred under a suretyship' follows from the context. The Author explains the part 'a son, that which is incurred as a surety', **Tathâ tatsutopīti** (p. 37. l. 1.) *similarly his son also &c.* (p. 85. l. 21). With a view to expound the part "their sons, moreover, should not pay", the Author analyses the expression 'his sons'. **Tayoḥ putrapautrayoḥ sutâwityanena** (p. 37. l. 2). *The sons of these—(i. e. of) the son and the grandson &c.* (p. 85. l. 25). Anticipating an inquiry who these two are, the Author explains by **Pautraprapautrau** (l. 2.) *the grandson and the great-grandson* (p. 85. l. 25). The Author now states the meaning of the exprsessin "Their sons must not pay": **Prâtibhawyâyâtamiti**: *incurred as a surety &c.* (p. 85. l. 23). The meaning is that both the grandson's son i. e. the great-grandson need not pay even a debt which is not a surety debt, and the son's

---

1. Here there is a mistake in the print. The words अन्यथा स्वत्वाभाव, being an exposition of the words in bold types at the end of verse 52, should be in that verse, and not under Verse 53 as it has been put here.

2. II. 1. 4.

son i. e. the grandson a surety-debt; both these need not pay when they have not taken the heritage.

Anticipating an opposition to the text of **Vyâsa** viz. "The debt of a grand-father &c." on account of another text : **Yadapi smaraṇam Khâdako vittahīna iti** (l. 4.) *as for the text 'if the debtor is moneyless &c'* (p. 85. l. 28). In the text of **Vyâsa** the payment of the original principal is by the son of a surety for payment ; while here, of the *Lagnaka* ; i.e. the surety alone has to pay the original and thus the contradiction.

The Author explains away the contradiction by **Tadapīti** (l. 21.) *that too &c.* (p. 85. l. 30.) should be explained—thus is the connection with what follows.

By stating that the sons of a surety for payment should be compelled to pay a debt, it comes to be said that the sons of the sureties for appearance or assurance must not be made to pay. There the Author mentions an exception at times : **Yatra darśanapratibhûrityâdinâ** (l. 7.) *where a surety for appearance* &c. (p. 85. l. 33.) Here by mentioning that the debt should be caused to be paid from that very pledge, it appears that even if the debt[1] be not completely discharged from the pledge, he should pay as much of the debt as the pledge allows and not more than that.

---

## Yâjñavalkya Verse 55.

**Ataścha dhaniko vittâdyapekshayeti** (l. 18.) *And hence.........the creditor...having regard to his wealth &c.* (p. 86. l. 23 ).

PAGE 32*

By the term ('*Âdi*') &c. are included, truthfulness, high birth, and the like. **Mṛte tu Kasminśchiditi** (l. 20.) *When however any one is dead* &c. (p. 86. l. 27.) i. e. of sureties jointly and severally liable if any one be dead. **Ekachchâyâpraviṣhtânâmiti** (l. 20.) *of sureties jointly and severally bound &c.* (p. 86. l.29.) Even the son of a surety jointly and severally liable, may at the option of the creditor, be made to pay in entirety. Among them i. e. those who are jointly and severally bound, if any one die, his son should be made to pay the share of his father only, and not the whole. This is the meaning.

---

## Yâjñavalkya Verse 56.

**Etachcha hiraṇyawiṣhayamiti** (l. 30.) *This moreover, has a reference to money. &c.* (p. 87. l. 14.) i. e. not to clothes, grains or the like. With reference to what has been said 'should

An objection

---

1 V. L. ऋणापर्याप्तत्वेऽपि.

be paid forthwith without waiting for any particular time', the Author anticipates an objection by **Nanu idam wachanamiti** (l. 21). *It may be said that this text &c.* (p. 87. l. 16.) by stating that 'a double should be returned' (the payment of) the double only is intended. That double is certainly without prejudice to the rule[1] stated before as to the increase stated above regarding the month &c. and the increase therefor.

This is what comes to be said: when the amount gets doubled in accordance with the rate of interest stipulated by him at that time only should a double be given by the debtor to the surety who has paid off the amount ; in any other case, the original amount should be paid together with whatever amount may have accrued as interest, and the payment of a double immediately is improper.

It has been said that the double is deducible even without perjudice to the periods of time mentioned before. There the Author states an illustratration of the deduction even without prejudice: **Yathâ jâteṣhtiwidhânamiti**[2] (l. 32.) just as the rule regarding the performance of the rites at the birth (of a child).

This is the last section of the Third Part of the Fourth Book, "On the other hand, when there is no[3] command, there is no reward for the reason that there is no relationship of a part to the whole". There is a Vedic[4] text viz. "On the birth of a son, one should perform the *Vaiśvânara* sacrifice[5] with twelve post-herds. There a question may arise : Is this birth-sacrifice to be performed immediately after the birth of the son, or only after the completion of the birth[6] rituals ?

---

1 i. e. at p. 28. l. 13. citing the text of Nārada I. 104. प्रतिमासं स्रवन्ती या वृद्धिः सा कालिका मता ।

2 This is called the Jâteṣhṭi maxim, which includes four अधिकरण running over sutras 39-39. See note in the Mitāksharā.

3 Read अचोदिते न for अचोदितेन.

4 This passage occurs in the Taittirīya Samhitā in the Second Kānda, Second Prapāṭhaka. Fifth Anuwāka and occurs at. p. 1486 of No. 42 of the Ānandâśrama Series. This Anuwāka is described as आभिशस्तादिकर्तव्येष्टिविधिः । The whole passage runs thus विन्दते प्रजां वैश्वानरं द्वादशकपालं निर्वपेत्पुत्रे जाते यस्मिञ्जात एतामिष्टिं निर्वपति पूत एव तेजस्व्यन्नाद इन्द्रियावी पशुमान्भवति.

5 जातकर्म—*i. e.* the special rite which is prescribed to be performed by the father immediately after the birth of the son. It is as follows: Immediately the son is born the father after having a look at him, should bath with his face towards the north in a river &c. with gold, at night, near fire. Then the ritual is detailed, See संस्कारपद्धति No. 94 Ānandāśrama Series pp. 56-58.—See also Āpastamba Gṛhya Sūtra VI. 15. & 1-7. pp. 212-219 Mysore Sk. series; also Baudhāyana II. 1. 1-22. Āśvalāyana sūtra. I. 15. 1-3. and Pārashara XVI. 3-4.

It would appear prima[1] facie that the particularisation of the person[2] charged being on account of the reason of the son's birth, the sacrifice must be performed immediately after the occurrence of the reason (therefor) and so even before the birth-ritual. The demonstrated conclusion, however, would be, that birth alone is not the qualification of the person charged, but even the purification &c. induced in the son. And thus the qualification of the person charged is the combination of the birth and the purification (of the son.) The purification &c. of the son, moreover, is desired by the father for a son living, and not under anything contrary to it. The life (of the son) can be derived only from the sucking of the breast, and the sucking of the breast has been prohibited before the birth rituals. Hence the sacrifice can be only after the birth-rituals. And further, thus the sacrifice which is to be performed after the birth having been put[3] off till after the performance of the birth rituals, that should be performed only after the (expiration of the period of) impurity, and not after the birth-ritual only—there being no warrant for giving up the part regarding purity after an interval; and also as the rule that 'an act should be performed by one who is pure' is without an exception. This is in accordance with the opinion of the[4] **Guru**.

According to the view of the **Bhaṭṭa** however, on "the other hand, when there is no command, there is no reward, for the reason that there is no relationship of a part to the whole". There is a Vedic Text "On the birth of a son, one should perform the *Vaiśwānara* sacrifice with twelve post-herds". There, a doubt arises, whether the sacrifice is (to be performed) immediately after the birth of the son, or only after the (completion of the) birth-rituals. The objector would say that a special[5] act being necessarily due after the special cause, the special cause being the birth, the performance must be immediately after the

---

1 This is the संशय, statement of an alternative.

2 नियोज्य *i. e.* one on whom the duty of performing the rite has been laid by the Rule.

3 उत्कर्ष as opposed to अपकर्ष-used when an act is performed before the due time.

4 गुरुमत and भट्टमत. These two schools of thought in the Mīmānsā literature came into existance after the time of the great *Śabaraswāmin*. One was led by *Prabhākara* otherwise known, as *Guru*, an epithet which he acquired from his illustrious disciple *Salikanatha* and others; the other was led by *Kumārilabhaṭṭa*, and his doctrines are known as *Bhāṭṭamata*. The present Mīmānsā is largely influenced by this view, which had the last word.

5 This has a reference to the invariable cocommittance between cause and effect.

birth. Under the remaining[1] portion of the text, one is entitled to perform the *Vaiśwânareshti* who has a desire for the purification &c. of the son. However the result regarding the purification &c. of the son is possible only when the son is living. And the life of a son is dependent on his sucking the breast immediately after he is born. That sucking of the breast is only after the birth-rituals. Therefore the conclusion is that the sacrifice should be performed only after the (performance) of the birth rituals, so that it may not be contradictory to the result as to the purification of the son.

PAGE 32 A.

In this state of things, another suggestion comes up in a third (mode of) construction. Is the Sacrifice to be after the birth ritual or after the (lapse of the period of) impurity? There, on account of the specially inducing reason viz. the purification in the son, this sacrifice which even though it became due (for perfomrance) after the (occurrence of the) cause (of its performance) in the form of the birth, has been put off till after the birth rites. Having been (already) thus put off, its further postponement until after the expiration of the period of impurity being without a reason, the conclusion appears to be reached that it must be performed immediately after the birth rituals. Therefore it is maintained that the cause for the immediate performance having been qualified by the reason of the consideration of purification and the like, and an exception having been admitted to the immediate performance, in anticipation of a period of purification, it should be performed after the expiration of the (period of) impurity, about the full-moon day or the like period. This latter being also part of a pure period; and also the text, "one should perform an act in a state of purity" being without an exception.

The use of this however to the context is in this way: As the rule regarding the performance of the Birth Sacrifice is without detriment to the rule about purity of time, so the rule as to the doubling is without detriment to the aforesaid rule as to the accumulation of interest according to (the lapse of) time and expressed by the rule. "An eighteeth part is the interest." Therefore it does not get doubled at once.

The Author even points to an incongruity as to a doubling at once. **Apicha sadya iti.** (p. 37. l. 32.) *Moreover.........immediate* &c. (p. 88. l. 3.) This is the meaning: Immediate doubling means

---

1 *i. e.* in the quotation given above in note 4 on p. 76 above यस्मिञ्जात एतामिष्टिं निर्वपति पूत एव...भवति &c.

immediately along with the interest the doubling occurs and not in its original form. In the case of beasts and the females, the increase is the progeny only since it has been said[1] "in the case of females and beasts, however, ( the interest is ) the progeny." Morover according to the view as to an immediate payment of the double, there being no immediate progeny in the case of beasts and females, only the original will have to be paid, and not a double ; therefore an immediate double is not proper as it is not inseparably linked.

The Author refutes (this) : **Tadasadityâdinâ** ( p. 38. l. ) *This is wrong* &c. ( p. 88. l. 7. ). This is what is (intended to be) said : In the text "In the case of cloth, grain and gold respectively (the interest is ) fourfold, threefold and twofold" the doubling etc. having been reached in course of time by the very force of the expression, the mentioning here again of the doubling in course of time would be improper. Therefore what had not been stated before viz. an immediate doubling must necessarily be the rule (intended) here ; the (reference to the) rule regarding the performance of the birth ritual not being without a meaning. The special point is that this view is even without any contradiction to the text " one should perform an act in a pure state".

Now the objector may (try to) maintain that from this[1] very text viz. "for a debt which the surety has been made to pay &c." a rule as to the payment of a double by efflux of time alone could be deduced from the conclusion drawn in the (discussion of the) particular subject, so the Author says something bearing on that : **Atha prâtibhâwyamityâdinâ** ( p. 34. l. 5.) *again a surety debt* &c. ( p. 88. l. 18. ) The Author now points out that the payment of a double is by efflux of time only. **Ataśchâsyeti** (p. 38. l. 7.) *therefore this* &c. (p. 88. l. 25.) As there is no doubling of a friendly gift when not demanded, a payment made by a surety also being a payment made on account of friendship as demonstrated before and (therefore) there being an absence of interest, by way of an exception to it for a payment made by a surety, a double in course of time should be paid even though not demanded.

The Author refutes this: **Tadapyasaditi** ( p. 38. l. 8. ) *this also is wrong* &c. A sentence is interpreted either according to its literal meaning or by its implied sense. Such a meaning is neither literal,

---

1 Read इत्यस्मैव for इत्येपस्यैव.

2 Yājñ. II. 39. 1 I. 124.

nor does it arise by implication. Therefore, not this interpretation, but on the other hand, the one stated by us is alone acceptable. This is the meaning.

---

## Yâjñavalkya Verse 57.

**Nibandhaṃ**[1] **dâpayettamiti** (p. 38. l. 19). *He should be made to pay the amount guaranteed* &c. (p. 89. l. 21.) *Tam i. e.* the amount; he should be made to pay, is the meaning.

Here ends the Law as to Sureties,
in the Chapter relating to the Recovery of Debts.

## THE LAW OF PLEDGES.

The Author expounds the Text of **Nârada**[2] viz. **Adhikriyata ityâdi** (p. 38. l. 20.) *that which is deposited is a pledge &c.* (p. 90. l. 17.) by **Kṛtakâla âdhânakâlaschetyâdinâ** (p. 38 l. 21.) *'At the period fixed' i. e. 'at the time of the loan'* &c. (p. 90. l. 20 & 21).

There, having mentioned the characteristics of a pledge which has a time limit, the Author expounds the nature of a pledge regarding which no time had been stipulated by **Deyaṃ dânamityâdinâ** (p. 38 l. 33. & p. 39 l. 1.) *deya means giving*&c. (p. 90 l. 25).

The Author states the nature of a deposit for safe custody: **Gopyo rakṣhaṇīya iti** (p. 39. l. 2.) *for safe custody i. e. for being preserved &c.*

A pledge for enjoyment is well-known. In this a deposit is said to be of four kinds. Thus, one for safe custody with a time-limit, and one for enjoyment with a time-limit, thus twofold. And one for safe custody without a time-limit, as also one for enjoyment without a time-limit, of two kinds.

---

## Yâjñavalkya Verse 58.

The Author states the literal meaning : **Prayukte dhana ityâdinâ** (p. 39. l. 5. ). *The amount lent* &c. (p. 91. l. 1.) Among

PAGE 32 B. the deposits of four kinds also, the Author points out by further sub-divisions **Kritakâlasya gopyasyeti** (p. 39. l. 9. ) *limited in time for safe custody* ( p. 91. l. 14 ).

---

1 दापयेत्तम् This is the reading of the सुबोधिनी. In the मिताक्षरा the reading is दापयेत्तत्.
2 I. 124.

It has been stated that a pledge for custody without a time limit, becomes extinct when the double is exceeded, while those for custody and enjoyment with a time limit become extinct after the lapse of the time fixed. There the extinction occurs by the[1] doubling only and not merely by the lapse of time. But then, even after that, what is the time allowed? So the Author says **Dwaiguṇyâtikrameṇeti** (p. 39 l.11) *On account of the transgression of the rule of doubling* &c. (p. 91 ll. 19–20) Now, an extinction has been stated to be of a pledge for custody with a time-limit when the amount is doubled. The Author anticipates an objection to it.

**Nanuâdhiḥ praṇaśyedityanupapannamityâdinâ** (p. 39. l. 15.) *It may be said, it is improper to say that a pledge shall lapse &c.* (p. 96. l. 26). The Author refutes it. **Uchchyate Âdhīkaraṇameva loke ityâdinâ** (p. 39. l. 19). *The answer is : Even the act of pledging itself is considered among the people &c.* (p. 91. l. 38.) Coupled with a contingent condition is the cessation of ownership; the cause for that; coupled with a contingent condition is the creation of ownership; the cause for that; thus is the compound to be understood in both places.

Indeed, let this be according to popular practice. Still how can there be an extinction of a pledge in the absence of an entire cessation of the debtor's right of ownership and an absolute acquisition of the proprietary interest by the creditor? Anticipating this objection, the Author says, **Tatra dhanadwaiguṇye nirûpitakâle prâpte cheti** (p. 39. l. 20). *So when the amount becomes doubled, and also when the appointed time has arrived* &c. (p. 92. ll. 4–5).

The meaning is this : By stating the rule viz. "when the stipulated period is over as well as when the amount has doubled a debtor paying the amount in the interval shall get back the pledge" **Bṛhaspati** has indicated that after the amount has doubled as also after the stipulated period is over, the amount may be paid before an interval of fourteen days, and not afterwards. Payment of the amount after that as also after the doubling, is stopped thereby. And when the payment of money is stopped, by the text "a pledge lapses &c." has been indicated an entire cessation of the debtor's right of ownership and an absolute acquisition of the proprietary interest by the creditor.

**Yato natwewâdhau sopakâra iti** ( p. 39. l. 33. ) *Nor, however, can he get...when the pledge is for use &c.* ( p. 12. ll 11–12 ). Pledge for use

---

1 Another reading is तत्र न द्वैगुण्यमात्र एव &c. It is not adopted here

i. e. a usufructuary pledge. There also it should be understood that no time is stipulated.

---

## Yâjñavalkya Verse 59.

The Author states the characteristics common to the pledges for custody and for use : **Nashto vikrtingata iti** ( p. 40 l. 2. ) *Has been spoiled i. e. has undergone deterioration &c.* ( p. 93 l. 1. )

The Author expounds so as to apply in common to both. **Tatra gopyâdhirnashtaschetyâdinâ** (p. 40 l. 3. ) *Here a pledge for custody if damaged* &c. ( p. 93 ll. 3-4. ) Destroyed i. e. where it has entirely perished. This should be understood as applicable to both kinds of pledges.

---

## Yâjñavalkya Verse 60.

**Âdhergopyasya bhogyasya cha swîkaranâdupabhogâditi** (p. 40 l. 14.) *Of a pledge i. e. for use as well as that for custody. By acceptance i. e. use* ( p. 93. ll. 26-28 ). It should be understood, that in the case of one for custody, by mere acceptance, and in that for use, by use.

The Author cites a text of **Nârada** in support of the rule that a pledge for use is established by ( the proof of ) mere use. **Âdhistu dwiwidhah prokta iti** ( p. 40. l. 12. ) *Âdhi is said to be of two kinds &c.* (p. 93. l. 30. )

Or, of the text viz. "Of a pledge for custody as well as for use &c." there is another interpretation. It is thus : This is the argument : the word acceptance itself has the meaning of use etc. the root *bhuj* is used to indicate protection as well as consumption. In the case of a pledge for custody, use means preservation; here the preposition उप *Upa* is used in the sense of pervasion. For in the rule regarding prepositions the preposition *Upa* is used to indicate contiguity, power, pervasion, functioning as a teacher, pointing out faults, gift, chivalry, repetition, beginning, worship, engagement, death after beating, investing[1] &c". In the case of a pledge for use, use means consumption. That is to say the consumption of fruits and the like.

In this explanation the Author quotes the text of **Nârada** in both places: **Âdhistu dwividha iti** (p. 40. l. 15.) *Âdhi is said to be of two kinds* &c. ( p. 93. l. 30. ) **Asya cha Phalamiti** ( p. 40. l. 16. ) *And the result*

---

1 Lit, not eating.

*of this* &c. ( p. 93. l. 32. ) That is to say of the clause "The (contract of) pledge is established by the (proof of its acceptance &c.[1])

The Author points out the result itself at details : **Swîkârânta-kriyeti** ( p. 40 l. 11 ) *in transactions which have been completed by acceptance* &c. ( p. 93 l. 34. )

The Author (now) expounds the meaning of the portion "If it suffers deterioration even when carefully kept" by **Sa châdhiḥ prayatnenetyâdinâ** (p. 40. l. 18) *And if such a pledge......carefully* &c. (p. 94. l. 2. )

## Yâjñavalkya Verse 61.

It has been stated before that a thing may be kept with oneself or made over to another. There the Author states the thing kept with oneself. **Dhaninaḥ swachchhâśayatweneti** (p. 40 l. 25) *Relying upon the good faith of the creditor &c.* (p. 94 l. 18).

The Author mentions the thing made over to another : **Yadi wâ adhamarṇasyeti** (p. 40 l. 26) *Or where,...of the debtor &c.* (p. 94. l. 21).

The Author gives a derivative exposition of the word *satyankâra* by **Karaṇam Kâra** (p. 40 l. 29) *Kâra is the same thing as karaṇa* &c. (p. 94. l. 26).

The Author expounds in another way the text 'a debt contracted on a *charitra* pledge,' &c. by **Anyortha** &c., ( p. 41. l. 1. ) *Another meaning &c.* ( p. 95 l. 1. )

## Yâjñavalkya Verse 62.

**Asannihite punaḥ prayoktari iti** (p. 41. l. 10). *When, however, the creditor is absent* &c. (p. 95. l. 26). *Prayoktâ* ( obligor ) *i. e.* one who advances the loan *i. e.* to say, the 'creditor.'

## Yâjñavalkya Verse 63.

Anticipating a position where 'the creditor himself ( may ) be absent, and there are no relatives of his ( who are ready ) to take the amount, the Author propounds an answer: **Tasmiṇ Kâle yattasyâdher-mûlyamiti.** ( p. 41. l. 15. ) *The price of the pledge at that time &c.* ( p. 96. l. 8. )

---

1 Add at the end of p. 32ब after the words फलत्वेमेव विविच्य दर्शयति । स्वीकारान्तक्रियेति । 'रक्ष्यमाणोऽप्यसारताम्' इत्यमुमंशं व्याचष्टे । स चाधि : प्रयत्नेन इत्यादिना ।

What has been said before viz. 'or when the creditor is absent &c" an answer to it is : **Yâwadwâ tanmūlyadrawyamiti** ( p. 41. l. 16.) *Till the...........amount equal to its value &c.* ( p. 96. l. 120 ).

The[1] Author explains the meaning of the term *wâ* (or) in the original text **Wâsabdo Wyawasthitavikalpârtha iti** (p. 41. l. 21.) *The word wâ is intended to lay down the rule of distribution in the optional case that would arise.*

The Author points out the rule in an optional case by **Yadarṇagrahaṇakāle** &c. (p. 41. l. 21.) *When at the time of the loan &c.* (p. 96. l. 24). **Vichārite twayamiti** (p. 41. l. 22.) *In case of a contract-however the rule here &c.* (p. 96. l. 28). *i. e.* the one laid down in this text as aforesaid.

---

## Yājñavalkya Verse 64.

**Yadâ prayuktam dhanamiti** (p. 41. l. 26.) *When the amount advanced &c.* (p. 97 l. 1.) This is the import: When the amount advanced as a loan had become doubled together with the interest, and a pledge has been delivered for use thereafter, then when the creditor has received a double of the amount realised from the pledge, the pledge should be given up.

**Yadi wâ âdâveveti** (p. 41. l. 27.) *Or......if even at the beginning &c* (p. 97. l. 8.) This is the import : At the very time of taking a loan the debtor thus says to the creditor, "when the amount becomes doubled along with the interest, then this pledge is to be utilised by you, and not before that." Thus, on account of the special stipulation, unless it becomes doubled, till that time the pledge shall not be used. Or until it becomes doubled, until that time, even in the case of a pledge tendered at the time of receiving the loan, there shall be an absence of use subject to the Act of God or of the King or any difficulty or any other cause. Thus in both cases, on account of the reason that even a pledge delivered at the taking of the loan cannot be utilised when the debt becomes doubled and thereafter the creditor begins to utilise the pledge, and even the amount realised from the pledge is doubled, so that it becomes equal to the double made up of the amount advanced together with the interest, the pledge should be released.

---

1 Add मूलवचनस्थवाशब्दस्याभिप्रायमाह । वा शब्दो व्यवस्थितविकल्पार्थ इति । व्यवस्थित-विकल्पार्थत्वमेव विभज्य दर्शयति ( यदर्णग्रहणकाल इत्यादिना ) &c.

The Author explains the texts of **Bṛhaspati** viz **Ṛṇi bandhamavāpnuyāt** &c. (p. 42. l. 2.) *The debtor shall get back the usufructuary pledge.* &c. (p. 97. l. 22.) by **Asyārtha iti** (p. 42. l. 3.) *The meaning of this text &c.* (p. 97. l. 25.) There the Author explains together with its meaning and import, the one sentence ending with "the debtor shall get back the usufructuary pledge the time for which has been matured" beginning with **Phalam bhogyam yasya** &c. (p. 42. l. 4) *That wherein the profits are to be enjoyed &c.* (p. 97. l. 26.) and ending with **bandhamavāpnuyât** (l. 6.) *Shall get back the pledge &c* (p. 97. l. 31.)

The explanation of *after paying off the principal amount* (p. 97.l.23.) is *to pay off interest simply,* (l. 29.).

With a view to introduce the explanation of the passage *'If it has exceeded, then the creditor does not get the amount'* (p. 97. ll. 23-24). the Author says, **Asyāpawādamāheti** (p. 42. l. 8.) *The Author mentions an exception to this. &c.* (p. 97. l. 37.).

The Author expounds the passage *'The debtor also will not get back the pledge'* (p. 97. l. 24.) by **Atha twaprakarṣhitam &c.** (p. 42. l. 10.) *If, however......has not been exceeded &c.* (p. 98. ll. 1-2.) If[1] it has exceeded, then the creditor does not get the amount (ll. 23-24.) is one sentence, and 'the debtor also will not get back the pledge' (ll.24-25.) is another. To these both **Bṛhaspati** himself states an exception, so the Author says: **Punaṛubhayatrâpawâdamâheti** (p. 42. l. 11.) *Again the (same) Author mentions an exception to both these cases &c.* (p.98.l.5.)

End of the Chapter on Recovery of Debts.

---

## LAW OF DEPOSIT.

PAGE 34*

## Yâjñavalkya Verses 65, 66, and 67.

*Verse 66.* **Grahītuḥ Saha Yortheneti** (p. 42. l. 27.) *Together with the property of the depositary &c.* (p. 99. l. 12.) The meaning of this: The amount which is lost along with that of the depositary, that loss shall be of the depositor i. e. of the owner of the amount and not[2] of the custodian of the deposit or of any other. This moreover is by way of extension to loss by robbers &c.

**Asyāpawādamiti** (p. 42. l. 29.) *An exception to this &c.* (p.99.l.15.) i. e. what has been said (above) viz. "*which has been carried away by*

---

1 Read तत् स्यात् for न स्यात्.

2 V. L. नोपनिभ्यादिरक्षकस्य for सोपानिस्यादि &c.

*force—shall not be caused to be restored*" (p. 99. ll. 3-4.) In this chapter the rest stands explained by the mere mention.

End of the Chapter on Recovery of Debts.

---

# Chapter V.

## OF WITNESSES

**Arthinā Swārthasidhyarthamiti** (p. 44. l. 6.) *By [the plaintiff for establishing his claim* &c. (p. 10. l. 7.) The meaning of this: 'Plaintiff' i. e. who has to establish a point, 'for establishing his claim', arranges where a man is so placed as not to be known by the Defendant and is made to hear the words of the Defendant in a manner so as to be clear, such a one is mentioned as a *secret witness.*

**Lekhakaḥ Prâdvivakaśhca Sabhyâsçhaivānupûrvaṣaḥ nṛpe paṣyati tatkāryaṃ sākṣhiṇaḥ samudârḥtaḥ iti** (p. 44. ll. 16-17.) *The writer the Judge, the Sabhyas, have in order, been laid down as witnesses when the case is under investigation by the king &c.* (p. 103. ll. 14-16.) Since they have been stated together ; this is the remainder[1].

The meaning of this (is as follows): When the king inquires into the case i. e. the proceeding under trial, these i. e. the writer and others 'in order', i. e. in the absence of the one mentioned before the one next in order, are witnesses and not that when the writer and others are themselves in charge of the court, that they themselves shall be witnesses, since it has been distinctly stated that 'when the King inquires &c." The mention of a judge, stated (again) along with the writer &c. is with a view to indicate the inclusion of the writer and others by implication. From the point of commencing the chapter of witnesses, having said something by way of an introduction, now the Author introduces the original text by **Te cha Sakṣhiṇaḥ Kīdṛśa iti** (p. 44. l. 13.) *Of what kind such witnesses* &c. (p. 105. l. 17.)

---

### Yâjñavalkya Verses 68 & 69.

With a view to indicate that, **Nârada** himself has pointed out witnesses declared to be incompetent by a special text, the Author says

1 शेष: The remaining portion of the argument or context.

**Ke punarvachanâdasākṣhiṇa iti** p. 45. l. 1. ) *what witnesses again are incompetent under a special Text &c.* ( p. 105. l. 2. )

**Nirgrantha iti**[1] ( p. 45. l. 5 and p. 105. l. 10. ) i. e. the [( p. 153. ) unbelievers. **Sākṣhiṇâm likhitânâm cheti** ( p. 45. l. 7. ) *witnesses...... entered on record &c.* ( p. 105. l. 17. ) The meaning of this: entered as witnesses viz. 'these (are) the witnesses' so written in a document by the parties; among these witnesses if one (even) depose falsely, these would be incompetent as witnesses on account of a contradiction.

The Author explains the text **Yorthaḥ Śrâwayitavyaḥ syât** ( p. 45. l. 11.) *When a claim has to be proved &c.* ( p. 105. l. 25. ) **Yenârthinâ pratyarthinâ wâ ityâdinâ** ( p. 45. l. 12. ) *Either by the plaintiff or the defendant* &c. ( p. 106. l. 1. )

This is what is (intended to be) said : 'In this particular suit these are the witnesses' after having thus indicated the witnesses in a particular suit, afterwards, if he dies without specifying any particular proof in regard to these men so indicated, or the particular point in the suit had not been set out, then in such a suit ( it being impossible to know ) for what proof he is to be a witness, he is not a competent witness on account of an intervening decease. Or in whose case a gap i. e. a separation has ensued on account of a dead (man), is a witness with an intervening decease.

Having thus generally established the inadmissibility of a witness with an intervening decease, the Author mentions an exception, **Yatra tu mumūrṣhetyâdinâ** ( p. 45. l. 14. ) *Where, however......at the time of death* &c. ( p. 106. l. 7.) **Mṛtântarerthini prete Mumūrṣhu-śrâvitâdṛte iti** (p. 45. l. 15.) *A witness becomes incompetent on account of intervening decease, unless he has been named by the dying man* &c. ( p. 106. ll. 11-12. ) The meaning of this is that if a disputant dies, the witness is called 'a witness on account of intervening decease'.

**Mumûrṣhuśrâvitam vinâ** ( p. 45. l. 16. ) *without his having been named by the dying man* &c. ( p. 156. l. 11. ) This is the import:. Having established by means of a text of **Nârada** that one who has been named by a dying man is a witness on account of intervening decease the Author cites a text of **Nārada** also for the portion that one mentioned even by one in health can become a witness with an inter-

---

1 See Yajñ. II. 192 and the Mitākshara thereon where the word *Pâkhandinaḥ* has been explained as ये वेदस्य प्रामाण्यमेव नेच्छन्ति नग्नाः सौगतादयः

vening decease by **Tathâ Śrâvitenâlu, enâpîti**[1] ( p. 45. l. 16. ) *Moreover. where a witness has been named by one free from any disease &c.* ( p. 106. l. 13. )

---

## Yājñavalkya Verses 70–71.

Having thus considered at great details the nature of incompetent witnesses, the Author now introduces the original text on this point **Tânentânasâkṣina iti** (p. 45 l. 18). *These are those incompetent witnesses &c.* (p. 106. l. 17).

---

PAGE 35*

## Yājñavalkya Verse 72.

It may be objected, indeed more than three are also to be conversant with law, and even one is to to be so versed in law, and so both are to be so (versed), and thus the expression "more than three" would be meaningless, so anticipating the objection the Author refutes it **Yadyapi Śrautasmārtakriyāparā ityādinā** (p. 46 l. 4). *Although...... devoted to the performance of the Śrauta and the Smârta rites &c.* (p. 107. l. 27).

Indeed it may be said that adultery, theft, insult and heinous offences all these are designated as *sāhasas* (Heinous offences), and therefore their separate mention is not proper; so the Author refutes by **Manuṣhyamāraṇam Chāuryam** &c. (p. 46. l. 11) *manslaughter, robbery &c.* (p. 108 ll. 14–15). This is the import : An act in the presence of people and by a show of one's strength is force ; these offences of adultery &c indicated by the word *sāhasa* are included in such force. An act done aside by means of one's strength is also force. This force, therefore, differs by the difference of its objects. And from that it is designated by the word adultery &c. according to the difference of the acts done in private in relation to the several subject matters.

---

## Yājñavalkya Verses 73, 74, 75.

With a view to indicate that in the text "A Brâhmaṇa should be required to swear by truth, a Kshatriya by his conveyance and by his weapons, a Vaiśya by his kine" **Manu** himself points out an exception

---

1 i. e. any one of the parties.

The Author says : **Atra chāpawādastenaiva** &c ( p. 46. l. 26). *Here also an exception......by the same Sage &c.* (p. 109 l. 17). Here, cowherds, and the rest are to be taken as adjectives of the word *Vipras* and not independently.

**Anekajanmârjitasukṛtasaṅkramaṇasyeti** (p. 47. l. 16.) *The trasference to another of the merit acquired through innumerable births &c.* (p. 110. ll, 24-25). Many are those births ; there acquired ; that merit ; the transference of that wherein is what is known as the transference of the merit acquired through innumerable births. Thus is the compound ( to be solved).

## Yâjñavalkya Verse 78.

Indeed witnesses incompetent on account of a contradiction have been stated before.[1] Now by the text " In a disagreement—of the majority &c." even in spite of contradiction, they become (admissible as) witnesses ; and therefore there would be a mutual contradiction. Anticipating this objection the Author says : **Yattu bhedâdasâkṣhiṇa iti** (p. 48. l. 12.) *What, however.........incompetency as witnesses on account of contradiction &c.* (p. 112. l. 21.) Where there is equality in point of number, qualities &c. there being an absence of a speciality, there would be incompetency as witnesses on account of a contradiction. Where, however, there is a difference in the number, quality, &c. there would be a competency as a witness as stated before, and this in spite of a contradiction. This is the import.

## Yājñavalkya Verses 80.

**Pûrwoktalakṣhaṇaiḥ sâkṣhibhiḥ sâkṣhye swâbhiprâya iti**[2] (p. 48. l. 27) *When evidence has been given by witnesses qualified as above in the matter under consideration &c.* (p. 113. ll. 16-17). In the evidence given in relation to his claim, in contradiction to the allegations in the plaint. This is the order (of words).

Now, a witness is one who well knows the case for the disputant ;[3] the quality of that is called evidence. This very evidence is the case intended by the plaintiff himself. Thus evidence means one's own intention. Threfore the word evidence has been explained as one's own intention. In this sense, the order of words is as found (in the text).

1 i. e. at p. 45. l. 30. (Text.)

2 This should have been in the bold type as it is a quotation of the words of the Mitākshara.

3 अर्थी.

**Nigade datta iti** (p. 48. l. 30)......*was given &c.* (p. 115. l. 14). *Nigadah* is a statement loudly made in clear terms in the presence of the councillors and other people. In that given *i. e.* made. This is the meaning.

**Yadârthi pratijñârthasyeti** (p. 49 l. 3) *When the plaintiff......about the allegations in the plaint &c.* (p. 113 ll. 34. 35). This is the import : Conscious in his own heart about the truth of the allegations in the plaint, a strong conviction having been formed that that alone was the fact, in any exposition other than on that basis leads to a suspicion of a defect even in the witnesses. There is thus no visible defect in these witnesses. And therefore by reason of the defect in them thus imagined, resort to another evidence verily follows. And with such other evidence the assessors at the trial should proceed with the suit, vide the text[1]. "After discarding all circumvention......according to actual facts".

It may be asked, indeed, how can a fault be seen in the witnesses from one's own consciousness?[2] so the Author demonstrates it *by means* of an illustration, **Yasya cha dushtam karaṇam** (p. 49 l. 4). *He whose sense of perception is faulty &c.* (p. 114 l. 3). The meaning of this is this:

PAGE 36*.

One whose organ of perception such as the eye or the like is faulty *i. e.* affected by a defect of the glasses or by jaundice e. g. where in regard to a subject of cognition that 'It is silver' there is an opposite congnition viz. 'This is not silver'.--Such a cognition i. e. knowledge is not good. This is the meaning of the passage cited as an illustration to suit the context. So the Author says : **Yathâ Chakṣhurâditi** ( p. 49. l. 5. ) *as......such as the eye* &c. ( p. 114. l. 5. ) This is the import: On account of an incongruity as to the subject matter owing to the thing e.g. the mother of pearl being wrongly taken as silver, the consciousness that 'this is silver' is unreal[3] as is the case in the passage in the illustration, so also is to be the application here.

Not only by argument is a resort to another means of proof proper, but even by reason of the authority of a text also, so the Author says: **Sâkshiparîkṣhâtirekeṇeti** ( p. 49. l. 6. ) *Evidence of witnesses.........by means other than &c.* ( p. 114. l. 9. ) The import is this: The decision is to be reached not merely by the evidence of witnesses, but also by an examination of their statements. And thus while the examination of the depositions of witnesses is being made if their statements are uncontradicted, then these are evidence ; otherwise when the state-

1 Yājñ. II. 19.

2 V. L. स्वप्रमित्या साक्षिषु दृष्टदोषः कथं is the correct reading and the translation is based on it.

3 For रन्यथात्वतऽजनित &c. read रयथार्थत्वात्.

ments of witnesses stand contradicted, there would be an assumption of a fault in the witnesses themselves; and this is ascertained on the strength of the process of examination.

The Author explains the text of **Kātyāyaua** viz "when evidence is free from fault &c" (p. 114 l. 12). **Kriyâ Sâkṣhilakṣhaṇetyâdinâ** (p. 49 l. 9) *Evidence in the form of witnesses &c.* (p. 114 ll. 15 16) **Sa śuddhastathâ** (p. 49 l. 11) *Is considered as true* (p. 114 l. 42) is the explanation of the word *śuddha*. **Tathâbhūta iti** (p. 49 l. 11.) *Having been found as such &c.* (p. 114 ll. 22 23). Found as such i. e. found as a fact, that is to say, as true. The Author states the import of the text of **Kâtyâyana : Karaṇadoṣhabâdhakapratyayâbhâva iti** (p. 49 l. 12) *In the absence of any data for inferring a fault in the senses &c.* (p. 114 ll. 14 18). By the portion 'When evidence is free from fault...principles of justice' (p. 114 ll. 11–12) is mentioned an absence of a fault in the senses indicating the nature of evidence in the form of the signs of witnesses. And by the passage "a plaint which has been found to be correct by comparison with testimony refined" &c. is indicated an absence of a sign of anything contradictory. And thus in the absence of a fault in the senses or a sign of any thing contradictory, the subject matter is not false i. e. is true. This is the meaning in substance.

**Swabhâwenaiva Yadbrūyuriti** (p. 49 l. 20). *Whatever witnesses declare quite naturally &c.* (p. 115 l. 9.) The expression 'quite naturally' in the text is to be understood to apply in the present context, as before having any idea that their evidence would be inconsistent with one's allegations in the plaint where even others are cited[1] as witnesses. The Author refutes what has been said about a position of inconsistency at the time of defence—**Ataḥ paramaparituṣhyatâpīti** (p. 49 l. 24) *after this...even though he be dissatisfied &c.* (p. 115 ll. 18–19).

It has been stated that when a plaintiff relying upon his own consciousness is dissatified with his evidence he may resort to other evidence; such, however, is not the case in the case of the Defendant, so the Author says **Yatra tu pratyarthinaḥ** ( p. 49. l. 26 ) *where, however, the defendant* &c. ( p. 115 l. 21 ).

The Author points out the subject of the text of **Manu** "*He to whom...happens*" &c. **Etachcha yasyochuḥ sâkṣhiṇaḥ Satyâmiti** ( p. 49. l. 20. ) *This, moreover,...he whose witnesses depose to the truth &c.* (p. 115 ll. 33–34). This is the meaning : If it be asked, moreover,

1 Read निर्दिश्यात् for निर्देश्यात्.

in which respect is this text of **Manu**, viz 'He to whom happens &c." is to be regarded as an exception to the text viz. "He whose witnesses depose to the truth of a plaint, shall be successful" the Author has stated this. Others, however, regard it as relating to the derivative meaning only.

This is what amounts to be said: If after the statements of witnesses have been made the defendant is satisfied,[1] then the success is of the plaintiff, and the defeat is of the defendant. If however, owing to a disagreement with his own consciousness the defendant is not satisfied, then while the statement of witnesses is being tested, if the witnesses are found to be faulty, then by the text of **Manu** viz "He to whom within seven days...happens &c." stands countered by the text[2] of **Yâjñâvalkya** viz. "He whose witnesses depose to the truth &c." and therefore moreover the success will be of the defendant, and of the other party the defeat.

With a view to attack the exposition of a part of the text[3] of the **Yogîśvara** viz. "Even after evidence has been given by witnesses &c." the Author again repeats the explanation and states an objection viz: *Some explain the text even after witnesses have given evidence* &c. (p. 115 l. 36) and refutes it **Tadasaditi** (p. 50 l 2) *this is wrong* &c. (p. 116 l. 4).

With a view to bring out clearly the genesis of the evidence of the defendant the Author explains the nature of the position of a plantiff and of a defendant; **Tathâ hiarthî nâmeti** (p. 50 l. 2). *Because a plaintiff is he &c.* (p. 116 l. 6.)

It may be said let it be that the defendant has to prove a negation, but how does it become germaine in the matter of the burden of proof? So the Author says **Tatrâbhâwasyeti** (p. 50. l. 3.) *Here... of the negation* &c. (p. 116. ll. 8—9.) This is the import: The negation of an affirmation is negation. A negation is by its nature dependent upon an affirmation. For, when a negation is mentioned, a question as to whose negation it is may be anticipated, and the explanation would be by relation to the exposition of the jar, and the cloth, which are referred to their counterpart viz the negation or absence of a cloth, or the absence of a jar, &c, as also in the non-existence caused by destruction, the nature of the negation or non-existance being established at a period subsequent to the estab-

1 See Bālambhatta. 2 Yajn. 11. 79. 3 II. 80.

lishment of the affirmation, the establishment of a negation is relatively dependent upon the nature of the affirmation. While, on the other hand, quite contrary to this, an affirmation is established quite independently without regrd to a negation, and, therefore, the establishment of an affirmation[1] is independent of the establishment of a negation. And thus of the two the affirmative and the negative (respectively) being established by dependence and independently, on account of its beging established indpendently, it is proper that an affirmative should be established as a point.

It may be contended, indeed what harm is there that because a negation is established by dependence therefore it should be regarded as a point to be established, so the Author says **Abhâwasya swarûpeṇeti** (p. 50 l. 4) *By its very nature a negation &c.* (p. 116 l. 12) This is the meaning: An affirmative may be directly measured by the means thereof such as witnesses and the like, while a negation is not directly measured but mediately through the affirmation; and moreover, a point which can be directly measured can alone be the point to be established and not that which has to be measured mediately.

*PAGE 37.

Now the objector states by anticipation another interpretation of the text "Even after evidence has been given by witnesses &c" by **Atha mataṃ** (p. 50 l. 9) *It may be said again &c.* (p. 116 l. 23) It has been said that this is an exception to it. If it be asked, which is that exception? Anticipating this, and with a view to state the subject of the exception deductively, the Author points out the subject of the text[2]. "When two persons quarrel &c." **Atascha pûrwottaryorwâdinoriti** (p. 50 l. 13). *And therefore, when the witnesses of both the prior and second complainant &c.* (p. 117 l. 5.)

The Author mentions the point of the exception **yadâ tûttarawâdina iti** (p. 50. l. 14), *Where, however, the witnesses for the later complainant &c.* (p. 117. l. 7).

The Author points out that in this explanation the fault adverted to above does not exist: **Evancha nâbhâwasyeti** (p. 50 l. 15.) *And thus there would be no...for a negation &c.* (p. 117 l. 9.) It may be said, indeed, by stating that when the witnesses for the plaintiff and the defendant are even[3], the witnesses for the plaintiff should be examined, and when

AN OBJECTION.

1 For भावत्वे तद्वैपरीत्य read भावस्य स्वेतद्वैपरीत्येन &c. 2 Of Nārada.

3 समत्व i. e. equal in number or quality or both as has been elaborated in the next line.

the witnesses for the defendant either have greater merit or are double then only the defendant's witnesses should be examined, even in one suit there would be burden on both the disputants, and thus there would be a contradiction of the rule "In one suit the burden of proof cannot lie on two litigants", so the Author says **Chaturvidhottaravilakshaṇatwâditi** (p. 50 l. 15 ). *The answer is of a kind different from the four varieties of answer &c.* THE ANSWER. (p. 117. l. 11.) The import is this: It is only in the (four kinds of) answers (viz.) (the admission of) the truth, the denial, special reason, or *Res Judicata,* that the burden of proof does not lie on both the plaintiff and the defendant. In the present instance, however, both being (in the position of) defendants, the answer being a different one from these, the rule as to the burden is accordingly.

The Author mentions another way: **Ekasmin wyawahâre yatheti** (p. 50 l. 16), *As, in the same trial* &c. (p. 117 l.14). The meaning is this: As according to the opinion of *another i. e.* of the *Siddhântin,* after the depositions of witnesses have been made the allegations in the plaint appear to be falsified, and as this does not agree with the internal conviction, there is a resort to another means of proof, similarly according to our opinion also, a double proof of the plaintiff and the defendant takes place.

This is what is (intended to be) stated: It may be said that as according to the opinion of the *Siddhântin,* even when the rule that 'there cannot be a double proof for one' is in force, in the case of an incongruity with one's own internal consciousness, there is a resort to another means of proof, so in our view also even when the rule exists that "In one suit the burden of proof will not lie on two litigants" there is a double proof in the manner stated. The Author refutes this by **Tadapyâchârya iti** (p.5. l. 17) *Even this the Venerable Teacher &c.* (p. 17. l. 16.) 'The Venerable Teacher'. viz. **Viśwarupâchârya,** as will be found in this work in the passage "expanded by the hard language of *Viśwarûpa*" &c. From this text[1] "*even after the witnesses have given evidence either from...express &c*". 'From this' *i. e.* from *this* text This is the meaning.

---

1 There appears to be a difference in the reading of the text of the Mitākshara as adopted by Bhaṭṭa Vśweśwara. Instead of 'उक्तेऽपि साक्षिभि : साक्ष्ये' इत्यपिशब्दात he reads 'उक्तेऽपि साक्षिभिः साक्ष्ये' इत्यतःशब्दात्. This also appears to be the reading found in other editions. There, the word अतः 'this' means 'this text' viz. उक्तेऽपि साक्षिभि : &c.

## Yājñavalkya Verse 81

**Krodhâttu trigunam paramiti** (p. 50 l. 28) *through wrath however three times the last.* (p. 118 l. 12) *the last*[1] *i. e.* The heighest Sāhasa.

After stating a special punishment for special reasons such as covetousness and the like, the Author states a special punishment for false evidence : **Tathâ kauṭasâkshyantwiti** (p. 50 l. 31) *similarly... false evidence &c.* ( p. 118. l. 23 ). The Author points this as applicable only to ( where it is ) habitual **Etachchâbhyâsavishayamiti** (p. 50 l. 32 ) *This, moreover, is applicable to (a case of) a habitual &c.* (p. 118 l. 24 ),

This is what is (intended to be) said : In the case where there is no habit, the commission having been only once, the termination ending in (*kta*) and indicative of the past would be used so that the form would be *Kṛtān.* It is not so with the *Śânach* termination ending with *Kurwāṇān e. i.* (making), which is indicative of the present tense. The present continuing means the non-completion, of what has been begun. By reason of false evidence having been given again and again and as if it is not ended, the continuing present also is indicative of the giving of the false evidence. Hence it is that it is said that it is applicablee to where it is habitual.

The Author expounds the text 'who give false evidence' : **Triṇ varṇâniti** ( 50 l. 30) *Three orders* &c. ( p. 118 l. 26 ). **Asya chârthaśâstrarûpatwâditi** (p. 51 l. 1.) *and as this text is in the nature of an Arth-Śâstra* &c. (p. 111 l. 29.) 'This text, *i. e.* the text,...'however,... false evidence &c.' (p. 118. l. 22–23).

Indeed, is it that banishment alone is everywhere for a Brâhmaṇa, and not a pecuniary punishment ? Anticipating this, the Author says **Brāhmaṇsyāpi lobhâdikâraṇaviśeshâparijñâne chetyâdinâ** (p. 51. l. 5. ) *Even in the case of a Brâhmaṇa when no special motive, such as covetousness etc is known &c.* ( p. 119. ll. 7–8.). **Atrâbhyâsa iti** ( p. 51. l. 10. ) *Here also in the case of a habit* &c. ( p. 118. l. 17. ) That is, the implication that here also in the case of higher ones, for all i. e. of the Brāhmaṇa and the rest, an absence of punishment is inferred, is improper. It may be said, indeed, a pecuniary punishment does not hold for a Brāhmaṇa as in the text of **Śankha** in the case of the

PAGE 38*.

---

1 परम् last i. e. the highest of the Sāhasas. Here there is a mistake in the print. Instead of परं तु उत्तम &c. read परमुत्तम &c.

three orders viz. the Kṣhatriya and the rest, deprivation of property, corporeal punishment, imprisonment and ordeal, while for a Brâhmaṇa, banishment alone has been stated. Anticipating this the Author refutes it : **Yattu Śankhawachanaṃ trayānâṃ warṇânâmityâdinâ** (p.51. l. 15.) *As to the text of Śankha, of the three orders* &c. (p. 120 l. 1.) This is the substance of the refutation : Deprivation of the entire propetry of a Brāhmaṇa is forbidden, not any kind of punishment.

It may be asked, merely on account of the deprivation of wealth having been mentioned along with corporeal punishment how can a deprivation of the entirety follow ? so the Author says **Śârirastwawarodhâdiriti** (p. 51. l. 16.) *as for the corporeal punishment it begins with obstruction* &c. ( p. 120. ll. 7-8.)

---

## Yâjñavalkya Verse 82.

**Etachcha pûrwaślokepyanusartawyamiti** ( p. 51. l. 30.) *And this again should be followed (to be the rule) even in the last verse* &c(p. 121. ll. 4–5.) This is the meaning : What has been stated that for a Brâhmaṇa unable to pay money, banishment, and for the Kṣhatriya and the rest unable to pay money fettering in chains &c. should in each case be read separately. **Tadânubandhâpekṣhayeti** ( p. 51. l. 32.) *then...regard being had to the exigencies* &c. i. e. by regard to caste, the property, qualities and the like.

---

## Yâjñavalkya Verse 83.

**Yatra warṇinâm Śūdrawiṭkṣhtrāviprâṇamiti** ( p. 51. l. 8.) *where ...to men of the four orders i. e. of the Sūdra, Vaiśya, Kṣhatriya and Vipra &c.* (p. 121. ll. 21–23.) Here the enumeration of the four orders in the inverse order is with a view to indicate that the killing of ( a member of) even the lowest order is censured, what then of the highest ?

It has been stated before that 'a permission for giving false evidence or for refusing to give evidence is given.' In that case in anticipation of the inquiry 'where is permission for giving false evidence given' ? as also 'where permission for refusing to give evidence is given' ? the Author indicates the subject where a false evidence is permitted. **Yatra Śankâbhiyogādâwiti** (p. 52. l. 7.) *where e. g. a complaint founded on suspicion &c.* ( p. 121. l. 19.). The Author mentions the place where refusing to give evidence is

permitted : **Yatra tu satyawachanamiti** ( p. 52. l. 8.) *Where, however, by speaking the truth* &c. ( p. 121. l. 32. )

The prohibition against telling a falsehood is of two kinds, General and Particular. The General as e. g. in "one should not speak an untruth ; one not speaking or speaking falsely" and the like. The Particular is instanced[1] in 'To all these shall he go who gives false evidence', 'A person not giving evidence' and the like.

In such a position it may be said that as to this particular prohibition regarding giving false evidence or not giving evidence by reason of the same having been permitted, there would be no ( necessity of ) expiation in such a case for false evidence or for not giving evidence, so the Author says **Sâkṣhiṇâmanṛtawachanaṃ cheti** (p. 52. l. 27 ) *false evidence ... for witnesses &c.* (p. 122–22 ll. 23 ). It may then be asked, indeed, where is the rule as to the *Sāraswatacharu* as ( is stated) in the passage "for purification from that &c." the answer would be that as there is no permission for infringing the general prohibition, this expiation is with a view to wipe off the sin resulting from infringing it, so the Author says **Yattu nânṛtaṃ wadediti** (p. 52 l. 18 ) *the text that one should not tell an untruth &c.* ( p. 122. l. 27 ).

It may be said, indeed, this text viz. " Where men of the four orders are likely to suffer capital punishment, there a witness may speak the untruth" which is in the nature of sanctioning what is prohibited, is meaningless,[2] since the guilt produced by the infringement of the rule regarding giving false evidence or not giving evidence would stand ; anticipating this the Author refutes it : **na cha mantawyam ityâdinâ** ( p. 52 l. 20 ). *it may be objected &c.* ( p. 122 l. 129 ). The import of the refutation is as follows, viz, that the Author's demonstrating the absence of the fault of infringing the general prohibition is with a purpose.

It may be said, ( even ) the thought of Brâhmicide produces sin ; a greater sin than that would be an attempt at it, and the greatest sin at the killing, and thus even when sin increases relatively to each one before, as by the performance of the expiation for the greatest sin produced by killing, smaller sins produced by the thought or attempt of it are wiped off, so here also by reason of the permissive text, the greatest sin being removed let[3] it also work at the removal of the incidental sin produced by the infringement of the general prohibition regarding

1 Yājñ. II. 74 ; 76. 2 अनर्थक may also mean-conveying a perverse meaning.
3 Here there is a mistake in the print Read भवतु for भातात्यगाशक्य.

telling a falsehood, as the Author says that on account of the permission in the text "where ... of the four orders &c", and on account of the force of the text " For purification from that ... ... should be present &c" there is no cessation of the smaller sin, and proceeds by **Yadyapi bhûyasâ &c** (p. 52 l. 23) *although ... of greater &c.* (p. 123 l. 3). The import is this: If there be a permissive text itself, then by the cessation of the greater sin, the cessation of the incidental smaller sin may also occur. But there is also a text prescribing expiation. Therefore for the purpose of avoiding the fault of meaninglessness in this, the non-cessation of the incidental smaller sin is assumed.

PAGE 39

The Author extends elsewere also the rule stated above, **Etadeveti** (p. 52 l. 26) *this......also &c.* (p. 123 l. 9). By reason of the extension of the rule stated before, an extension of the rule as to expiation may necessarily follow, so the Author mentions a restriction of it: **na cha tatreti** (p. 52 l. 27) *and there however not &c.* (p. 123 l. 13):

Here the Author mentions the genesis : **prâtiṣhedhântarâbhâvâditi** (l. 27) *as there is no other prohibition &c.* (p. 123 l. 12). This is what is (intended to be) said: As even when there is a general prohibition as to telling an untruth or against not speaking, there is still a particular rule prohibiting witnesses from it, similarly there is not a double prohibition in the case of a traveller and the like, but the rule as to prohibition is general only. Therefore as there is not any other particular rule of prohibition, and on account of the permissive rule there being an absence of the sin of infringing the general rule of prohibition, he does not incur an expiation.

**Here ends the Chapter on Witnesses.**

---

## Chapter VI.

### OF DOCUMENTS

"Evidence has been laid down to consist of writing, possession and witnesses". In this enumeration[1] of human evidence, although writing has been mentioned first on account of the connection of the witnesses and writings, having treated their priority as if not existing, in course of the context, possession, although placed in the middle, was treated first. And then having (first) understood the nature of

---

1 Yājñ. II. 22.

witnesses, by the text "there should be made a writing—with witnesses," the rule as to writings being accompanied by witnesses being more intelligible, the chapter on writings coming in after that on witnesses would be (more) appropriate, so the Author says: **Bhuktisâkshiṇau nirûpitâwiti** (p. 53 l. 1) *possession and witnesses have been explained &c.* (p. 124 l. 1).

The Author introduces the original text by **Tatrânyakṛtamâheti** (p. 43. l. 6.) *of these the Author mentions &c.* (p. 124. l. 15.)

---

## Yâjñavalkya Verse 89.

**Yuktamarthakramâparilopeneti** (p. 54. l. 16.) *with......without prejudice to the sequence of sense &c.* (p. 127. l. 4.) 'Without...prejudice to the sequence of sense' i. e. without infringing the rule of script or letters; such a writing; this is the order. The Author expounds the text of Nârada 'Not opposed to the usage of the country &c." by **Vidhânam vidhirityâdinâ** (p. 54. l. 19.) *that which explains in details is a (rule) vidhiḥ* (p. 227. l. 11.)

---

## Yâjñavalkya Verse 90.

**Na turiyâdibhiriti niyamyata iti** (p. 54. l. 26.) *and not by the last and others &c.* (p. 127. l. 37.) 'The last' i. e. the fourth, meaning a great-grandson.

The Author meets that objection stated before: **Bâḍhamiti** (p. 54. l. 27.) *true &c.* (p. 127. l. 35.) The meaning is this: By the text 'a debt should be paid off by sons and grandsons' (*the rule comes to be that*) a debt whether reduced to a writing or not reduced to writing should generally be paid by the three only, and another rule cannot hold under the authority of another Smṛti viz. that a debt evidenced by a writing should be paid by sons and grandsons only and not by the great-grandsons; and thus a doubt as to an exception in the case of a debt reduced to writing may arise[1], so the text 'A debt evidenced by writing should be paid' has been stated. The Author points out this very thing by reference to another[2] Smṛti in connection with the same text: **Tathâhityâdinâ** (p. 54. l. 28.) *for* &c. (p. 128. l. 2.)

The Author expounds the text of Kâtyâyana adverted to before: **Ittham patrârûḍhamiti** (p. 54 l. 29) *thus......which is entered in a docu-*

---

1 Read जायते for ज्ञायते.  2 Read स्मृत्यंतरं प्रकरण...पूर्वकं &c. for स्मृत्यंतरप्रकरण &c.

*ment etc.* (p. 128 l. 5). The Author explains how a doubt may arise by reason of this text, that in the case of a debt reduced to writing, that must be paid by sons and grandsons only and not also by the great-grandons ; **Atra pitṛṇāmiti** (p. 54. l. 30.) *here by...pitṛṇām &c.* (p. 128 l. 7).

This is the import : The plural[1] ends in three. Therefore by the statement pitṛaṇām "of ancestors", an inference arises that the debt of a great-grandfather must be paid by a great-grandson. Moreover, even the grandson may be dead after the time has passed, and then on account of texts such as 'sons and grandsons should pay a debt' and the like, although the non-liability of great grand-sons and the like coming after the grandson is established, still owing to the expression 'after the time has passed' a doubt may arise that a debt entered in a document is payable even by the great-grandsons and the like, so the Author concludes : **Ataścheti** (p. 55 l. 3) *therefore* &c. (p. 128 l. 14). It may then be asked, if this be so, then what would become of the text of Kātyāyana and Hārita ? so the Author says **Vachanadwayaṃcheti** ( p. 55 l. 3 ) *the two texts &c.* ( p. 128 l. 16).

---

## Yâjñavalkya Verse 91.

* PAGE 40 The Author mentions the operative portion in the text 'Is in another country, is badly written &c.' **Vyawahârâkshama iti** (p. 55 l. 15) *unfit for a suit &c.* (p. 129 l. 6). In anticipation of a question, how would the unfitness for a suit (occur) ? the Author says **Vyavahārākṣhamatwaṃ chetyādinā** ( p. 55 l. 14. ) *unfitness for a suit* etc. (p. 129 l. 7). Here the connection with the sequal is that it becomes unfit for a suit.

**Yathopanyastasâdhyârtheti** (p. 55 l. 29) *in which is indicated how the point at issue was proved &c.* (p. 130 l. 4). The meaning of this :

'The point at issue' *i.e.* the point sworn to in the plaint, accompanied by that ; similarly accompanied by the answer, in the form of the second part, as also by the proof e. g. in the form of a document or the like ; similarly 'which has also the decision'; 'decision' i.e. the determination ; containing it, is the *jayapatra.*

**Etachcha chatūṣhpādwyawahâra eveti** (p. 56 l. 3) *moreover this...... judicial proceeding which contains the four components* &c. ( p. 130 ll. 18–19 ). 'This' i. e. the *jayapatra.*

---

1 This has a reference to the rule of Grammar that when a word is used in the plural number the least number intended cannot be less than three, as for one and two are the singular and the dual numbers.

## Yâjñavalkya Verse 92.

**Sâkṣhyasambhawaviṣhayamidam Hârītavachanam iti.** (p. 56. l. 19) *where it is not possible to have witnesses this text of Hârita &c.* (p. 131) .l 33.) **This i. e. that which is to be** presently quoted *i. e.* the passage which begins with' I did not &c.'

---

## Yâjñavalkya Verse 93.

The Author expounds the passage " or the creditor should endorse the amount received &c, " in another way : **Yadwopagatam praveśa-patramiti** (p. 56. l. 29.) *or a note of acknowledgement of receipt &c.* (p. 132 l. 13-14). The rest is easy.

Thus ends the Chapter on Documents.

---

# Chapter VII.

## THE ORDEALS

## Yâjñavalkya Verse 95.

A rule is possible in three ways, by relation to a particular offence, by regard to the nature of an ordeal, and in relation to both. Thus ; One is, that ordeals are ordained only in accusations for serious offences; these are the characteristics of ordeals is another ; and that these are the characteristics of ordeals in serious accusations only is the other. In this state of things, the only rule appears to be that the five ordeals indicated in "the balance, the fire, the water &c. " are only in cases of serious accusations only ; there is no rule as to the characteristics nor regarding a particular offence, and so there would be an incongruity with the text of **Pitâmaha**, so the Author says **Etâni mahâbhiyogeṣhwevetyâdinâ** (p. 87. l. 18). *These are to be resorted to only in cases of serious accusations &c.* (p. 133. l. 23). Here in the expression 'and not moreover' the word moreover is with a view to explain away the particular rule.

The Author anticipates an objection to the rule that the ordeals mentioned above are in cases of serious accusations only, and so says **Nanu alpâbhiyogepīti** (p. 57. l. 19. ) *Indeed...even in ordinary suits &c.* (p. 133. l. 26.) The Author refutes by **satyam** (p. 57. l. 19.) *true &c.* (p. 134. l. 1.) This is the meaning : The enumeration of *kośa* along with the balance and others is not with a view to indicate its restricted

application to serious accusations only, but with a view to indicate that as these i. e. the balance and the others occur in complaints accompanied by a challenge, so also *kośa* is in complaints with a challenge.

**Sâvashṭambhâbhiyoga iti** *Complaints with a challenge &c.* i. e. where the accused says "I know the guilt of this man" and offers to abide by the result (of the ordeal), that complaint is called an accusation with a challenge.

---

## Yâjñavalkaya Verse 96

**Alpâbhiyoge mahâbhiyoge śankâwashtambhayoriti** ( p. 58. l. 6. ) *in a petty complaint, in a serious charge, as also in a charge founded on suspicion &c.* (p. 155. l. 12–13.) "In a petty complaint" by the text "a *kośa* should be administered even in petty charges", and by the text 'these in trials for serious complaints', and by the text "the rice and *kośa* in complaints of suspicion only ; there is no doubt about this". While in cases of challenge, the text "the balance, the fire, the water, the poison, and the *kośa*" by their mention along with the balance and the rest should be regarded as already set out by the text "when the complainant has agreed to abide by the result".

**Tulâdîni vishântânîtyâdi** (p. 58. l. 6.) *beginning with the balance and ending with the poison* &c. (p. 135. ll. 14–15). Here also it should be understood that the rule has been indicated to be applicable 'only in complaints with a challenge, by **Mahâbhiyogeshweva** (p. 58. l. 7.) *in trials for serious charges only* i. e. by the text 'these in trials for serious charges only', as also in the text 'when the complainant offers to abide by the result'.

**Mahâchauryâbhiśankâyâm cheti** (p. 58. l. 11.) *and also in charges of robbery* &c. (p. 135. l. 25). Here even without the

PAGE 41

complainant offering to abide by the result, the rice and the rest should be administered; thus is the connection with what has been stated before.

**Râjabhiḥ Śankitânâm cha nirdishtânâm cha dasyubhiriti** (p. 58. l. 11.) *who have fallen under suspicion of kings, as also those who have been pointed out along with robbers* &c. (p. 135. ll. 36–37.) Here although in the text "pointed at along with robbers" by these words a suspicion for theft may not be produced, still by the force of the context beginning with the expression 'suspected by kings', and owing to the unreliability of robbers, even when pointed out along with them, a suspicion is indeed created.

Although the statement is general in the text in the case of persons charged with theft &c., still, by reason of the severity of the ordeal of the heated coin, it is considered to be a great ordeal, and it is but proper that by reason of the consequence[1] which follows viz. the (ordeal of the) heated coin being great its cause also viz. a charge of theft is great. This, moreover, will be demonstrated at details in the Book on Expiations.

**Abhiyogeṣhu sahyeṣhwiti**[2] (p. 58. l. 16.) *in bearable cases.* 'Bearable' i. e. which can be borne, i. e. which are mild.

**Brâhmaṇaparivrājakawaditi** (p. 58. l. 20.)) *on the analogy of the rule in the Brâhmaṇa and Pariwrâjaka maxim &c.* (p. 136. ll. 15-16.) This is the meaning: After the statement 'invite the *Brâhmaṇas*' although the *Parivrâjakas* are also included being indistinguishable from Brâhmaṇas, still as the specific statement again viz. 'invite the *Parivrâjaka*' is with a view to demonstrate the pre-eminence of the *Parivrâjaka*, so although the balance &c. as also the oaths are (stated) among ordeals, still the specific mention of oaths separately from the balance &c. is with the object of indicating the reason of inducing a decision after an interval of time. This is what is (understood to be) said: As the specific mention of *Parivrâjaka* separately is in consequence of a separate reason, so the separate mention of oaths is also owing to a separate cause; and that cause has already been stated before.

Or, there is another meaning of the expression 'like the rule in the *Brâhmaṇa and Parivrâjaka*'. In a statement 'invite the *Brâhmaṇas*, also invite the *Parivrâjaka*' although by the direction for inviting the *Brâhmaṇa*, the invitation of the *Parivrâjaka* is also established, as by the direction of inviting the Parivrājaka, the word Brāhmaṇa is understood to have a wider application than the word Parivrājaka, similarly although the balance &c. and also the oaths are understood to be ordeals, still from the use of the word ordeals and the word oaths (separately), it is (understood) that the word ordeal has a wider application than the balance.

Indeed, if oaths are the means for a decision after an interval of time, then the mention of *Kôsa* among the balance etc. which are the means of an immediate decision would be improper. Anticipating this, the Author puts in mind the reason already stated before: **Kośasya tu śapathatwepiti** (p.58 1.20) *however of the ordeal of Koṡa &c.* (p.136 l.17).

1 Read नैमित्तिकतमाषादुसारण निमित्तस्य चौर्यशंका.
2 In the Mitākshara the reading is सर्वेषु.

It may be said, as to what has been stated that in "all disputes like (those relating to ) debts and others, ordeals should be administered according to the possibility" is not correct; for in the case of (disputes regarding ) immovables, it would be contrary to the text of **Pitâmaha.** so the Author, anticipating this objection refutes it : **Yattu Pitiâmahawachanaṃ sthâwareshwityâdinâ** ( p. 58 l. 14 ) *as for the text of Pitâmaha viz* : *in disputes regarding immovables &c.* (p. 137 l. 1).

It may be said again, if that be so, in the text *of Pitâmaha*, in disputes regarding immovables the word immovable is meaningless, for even in other disputes, when human evidence is possible the ordeal is inadmissible, so the Author says: **Nanu vivâdântareshwiti** ( p. 58 l. 25 ) *indeed......in other kinds of suits &c.* (p. 137 l. 6.) The Author refutes it by admitting a half by **satyam** (l. 26) *true* &c. (p. 132 l. 8 ) The Author indicates the appropriateness of the word 'immovable' **Sthâwareshu viwâdeṣhu pratyarthineti** (p. 58. l. 29.) *in disputes regarding immovables...by the defendant* &c. (p. 137. l. 19.) This is the import : In disputes regarding immovables there is no option in regard to human evidence or the ordeals, and so the word immovable is used with a view to remove the rule as to option.

---

## Yâjñavalkya Verse 97

It may be said that by the very reason of the rule having been stated to be applicable in the hot seasons etc, other seasons come to be prohibited, a negation again therefore is meaningless, so the Author removes it: **Vidhânalabdhasyâpi punariti** (p. 59. l. 22.) *already established by the affirmative injunction* &c. ( p. 139. l. 13. )

---

## Yâjñavalkya Verse 98.

It may be said, in the text, 'Fire and Water, or for a *Śûdra* seven *Yawas* of poison &c.' let there be an option for the Śûdra alone regarding (the ordeal of) fire, water, and the poison, why is its application invited to the *Kṣhatriya* and the *Vaiśya* when they are not mentioned, so the Author says : **Brâhmaṇasya tulâvidhânât śûdrasya yawâ iti** ( p. 59. l. 29. ) *by ordaining the balance for a Brâhmaṇa and barley for a Śûdra &c.* ( p. 140. ll. 1–2. )

---

98 Text p. 59. l. 22. and Tr. p. 139. l. 15.

**PAGE 42***

Indeed, in the case of women and the like class when others besides them, accuse or are accused by each other, let the absence of an ordeal be for women only, under the text 'or by consent of any one etc,' there being an option; but what if women and the like accuse each other? So the Author says: **Parasparâbhiyoge twiti** (p. 60. l. 4.) *in cross-complaints however* &c. (p. 140. l. 17.)

It may be said, indeed, as there is an option as regards the performance of the ordeal, so let there be an option regarding an ordeal also, the Author says, 'it may be so in justice', but he says that by reason of the text of the Lord of the Yogis viz. "women, a child, old men &c." there is a restriction as to the balance: **Tatrâpi tulaiveti** (p. 80. l. 4.) *even there ......balance only &c.* (p. 140. l. 18.)

It may be asked, is this restrictive rule only in the case of charges with a Challenge? Anticipating this, the Author says no, and says: **Tathā mahâpâtakâditi** (p. 60. l. 5.) *in...about heinous offences* &c. (p. 140. l. 20.) Here, the word 'moreover' in the expression 'or moreover &c.' is with a view to indicate a similarity with balance in the case of women and the like, and not with all, as there is no similarity between an accusation on suspicion and an accusation with a challenge.

It may be asked is this rule as to the balance in the case of women and the like applicable for all reasons? So the Author says, no, by **Etachcha wachanam &c.** (p. 60. l. 5.) *thus this text* &c. (p. 140. l. 22.) This i. e. this text of the Lord of the Yogis viz. 'women, a child &c.'

The Author sums up the proposition stated: **Tasmātsâdhāraṇakâla iti** (p. 60. l. 11.) *therefore...at common periods* &c. (p. 141. l. 1.). With a view to restrict (the application) the Author says **Idamiti** (l.12.) *this* &c. This i. e. the text of the Lord of the Yogis viz. 'Woman, child &c."

By means of affirmative and negative rules, and by texts such as "For fire the *Śiśira* and the Hemanta" and the like (different ordeals) have been pointed out before for different seasons such as the *Śiśira* and others. It has been stated there that the justifying circumstances will be mentioned further. These the Author now points out: **Kālāntare tu tatkālavihitamityâdinâ** (p. 60. l. 12.) *during other periods, however... prescribed at the respective times* &c. (p. 141. l. 23.) The Author sums up the reason stated before: **Sarvathâpi vidhipratiṣhedhādṛtukâlânatikrameṇeti**[1] (p. 60. ll. 17–18.) *having regard to the prohibitive rule in*

1 Here there is a mistake in the print. Verse 98 ought to end with क्रमणेति and Verse 99 should begin with the words मध्यवर्तिनश्च &c. which must be in bold type.

*general...do not offend against the rule as to seasons and time &c,* (p. 141. ll. 22-23.)

---

## Yâjñavalkya Verse 99.

**Madhyawarti jalamapīti** (p. 60. l.21.) *water also, which is in the midst &c* (p. 141. l. 32.) The meaning is that in the text, "the balance, fire water, poison and *Kosa* &c." water stands in the midst of the balance and the poison, and so it is described as in the midst.

**Atra Kōśasya grahaṇamiti** (p. 60 l. 22) *Here the use of Kośa &c.* Here i. e. in the text 'Never until...a thosuand &c.' **Etâni chatwâri diwyānīti** *these four ordeals &c.* (p. 142 l. 2) i. e. the balance, the fire the water, and the poison. **Etachcha wachanadwayamiti** (p. 60 l. 27) *and moreover, both these texts &c.* (p. 142 l. 14) i. e. the one of the **Lord of the Yogis** viz 'never until—a thousand &c.' and the other that of **Pitâmaha** viz. "in a thousand—the balance &c.", (p. 142 l. 6). The rest is easily intelligible.

Here ends the Procedure for ordeals.

---

## Yâjñavalakya Verses 100-103

Here the form of the balance is described. The form of the balance is in the chapter relating to the balance. **Shashthyâhaḥ** &c. (p. 63 l. 29) *of sixty a day &c.* (p. 149 l. 2) **Khâgnibhirdinairmâsa iti** (l. 29) *with thirty days is made a month &c.* (p. 149 l. 3). Here by the word *kha* (sky) is expressed a zero. ; by the word fire, the (figure expressing the) number (three) 3 ; and therefore a figure like this *i. e* 30. is formed.

---

## Yâjñavalkya Verse 113.

The balance, fire, water, poison, **Kośa**, rice, heated *mâṣha*, the ordeal of Dharma and Adharma, Oaths as in "In (a case where the value of the subject matter is) *niṣhka* there should be an affirmation on oath" as also the rule regarding the punishment consequent on a failure of an ordeal, thus the chapter on ordeals with ten parts dealing with each kind of ordeal as also the supplementary parts is easy of understanding.

Thus ends the chapter on **Ordeals**.

Here ends the chapter on **Ordeals** in the **Subodhini** a Commentary written by **Bhatta Viśweśwara** on the **Mitâkṣharâ**.

# Chapter VIII[1].

## ON THE DISTRIBUTION OF THE DÂYA

Wishing to expound the Chapter on the distribution of the dāya with great effort[2], the Author points out the connection between the former part of the book with the latter by a reference[3] to the verses: **Pramâṇam mânuṣham diwyamiti** (p. 13 l. 1) *evidence, human and divine &c.* (p. 171 l. 1).

The Author explains the meaning of *Dâya*: **Tatra dāyaśabdeneti** (p. 73 l. 2) *here by the term dâya &c.* (p. 74 l. 5): The meaning is this: That wealth comes to be designated as *dâya* which becomes the property of the sons and the like, whose property it becomes on account of their connection viz. of the procreated and the procreator, with the owner *i. e.* the father and the like, of the wealth, and by reason of which connection, it becomes the property of those *i. e.* the sons and the rest having a counter-connection.

The Author states the nature of the unobstructible *dâya*: **Tatra putrâṇâṃ pautraṇâṃ cheti** (p. 73 l. 4) *there of the sons as well as of the grand-sons &c* (p. 171 ll. 9-11). The import is this: In the wealth of the father, as also in the wealth of the grand-father, the ownership of the son and the grandson comes about even without the intervention of any one other than themselves, and so it is an unobstructible,[4] *dâya*.

* PAGE 43

The Author expounds the nature of an obstructible dâya: **Pitṛ-bhrātrâdînāmiti**[5] (p.73 l. 8) *of the father, brothers, and the like &c.* Those of whom the parents and the brothers are the first, of that type. **Evaṃ tatputrādishwapyûhanîyamiti** (p.73 l.8) *the same should be understood also in the case of their sons and the rest &c.* (p. 172 l. 6). Here by the word (tat) 'their' are included the sons &c. of the son and the grandson. The point is this : Of him whose connection as to ownership is without interruption with the existing owners, the **dāya**

---

1 This chapter is wrongly shown as 9th in the Subodhini.

2 For प्रणिधानेन i.e. प्रयत्नेन.

3 पद्यसंबंधेन, The text of *Yâjñavalkya* is a running statement of verses one after the other arranged in 3 groups or Books viz. Āchāra, Vyavahâra and Prāyaśchitta. This subdivision of Chapters by heading is by *Vijñâneswara*.

4 The original is अप्रतिबंध. Mayne and other writers translate this as unobstructed. See note 4 Mitāksharā p. 171.

5 The other reading is पितृव्यभ्रात्रादीनां, 'uncle, brothers etc.' This is the reading adopted in the Mitākshara, where also this variant is met with. Bâlambhaṭṭa has also पितृव्य. This reading appears to be better than पितृभ्रात्रादीनां.

is unobstructible,[1] and of him whose connection is not immediate the *dâya* is obstructible.

After having stated the meaning of the word *dâya*, the Author now mentions the import of the word *vibhâga*: **Vibhâgo nâma drawya-samudâyavishayâṇâm iti** (p. 73. l. 9.) *Partition is (the adjustment) of diverse rights regarding property held collectively &c.* (p. 172. ll. 7–8.)

The import is this: The word partition is expressive of the assortment i. e. the establishment of each individual ownership to each particular portion *i. e.* the particular portion of the collective wealth from the (right of) ownership of sons and like others relating to the collective undivided wealth. Thus has been stated in continuation of the context of the previous verses the meaning of the expression 'distribution of the dāya' by referring, premising that "the distribution of dāya by the **Yogamûrti** &c." There with a view to refer as authority to the text of **Nârada** the author says **Etadevâbhiprety-oktam iti**[2] (p. 73 l. 10) *entertaining the same opinion it has been said &c.* (p. 172. l. 9). The Author brings out a meaning of the text of **Nârada** in support of his own view **Paitrasyeti'**[3] **Swatwanimittasam-bandhopalakṣhaṇamityâdinâ** (p. 73. l. 10) *Paternal is indicative of any relationship which is a cause of property. &c.* (p. 172. ll. 12–13). This is what is (intended to be) said: The word 'paternal' in the text of *Nârada* is indicative, by implication, of what has been stated[4] viz. 'by reason of his relation to the owner'. The word 'sons' is indicative, by implication, of a relationship without interruption.

After having stated the context, the Author premises in short an analysis of the chapter on Distribution: **Idamiha nirûpaniymityâdinâ** (p. 73 l. 12) *The following points have to be explained in this chapter &c.* (p. 172 l. 15). There by the expression, 'of what' is indicated the wealth, by 'how' the necessary procedure,[5] and by 'and by whom' are indicated the makers. There, the portion 'of what'[6] not having been incorporated in the original verse, but having regard to its usefulnes in the entire subject of distribution the Author brings this portion down first in the course of consideration: **Kasya Vibhâga ityetadiha**

---

1 Here the reading should be विद्यमानेषु स्वामिसंबंधिषु यस्याव्यवहितः स्वामिसंबंधस्तस्य अप्रतिबन्धो दायः (यस्य व्यवहितः &c.)

2 This should have been in bold types as it is a quotation from the Mitākṣhara.

3 The reading in the Mitākshara is पित्रस्येति. Balambhaṭṭa also has पैत्रस्येति.

4 *i. e.* above in the commencement of this chapter.

5 इतिकर्तव्यता—a proper or necessary thing to be done in connection with any particular thing.

6 *i. e.* of what property.

-chintyata iti (p. 73 l. 14) *'of what a partition' is the subject considered here* &c. (p. 172 ll. 19–20).

Here the consideration is twofold : For, the subject is the wealth which is to be distributed. There a doubt (comes up), will the distribution be of that which is not one's own, or of what is one's own ? From this arises the consideration of another topic. viz. 'Whether a distribution is the cause of ownership or not.' If distribution be the cause of ownership, then the distribution would be of that which is not one's own, and the ownership would be by this distribution, and not before that, as the distribution is not because of the cause of ownership. Hence arises a view that distribution is of that which is not one's own. On the other hand if distribution is not the cause of ownership, but birth[1] itself, then the ownership being from the very birth, there comes up a view that the distribution is of that which is one's own; this is one (point for) consideraion. The Author indicates this (point for) consideration : **Kim vibhâgâtswatwamuta swasya sato vibhâga iti** (p. 73 l. 14) *does the right of partition arise after partition or does partition take place of ownership after there was the right of ownership &c.* (p. 172- ll. 21–22) ;

Another consideration is the subject of ownership. The Author mentions that : **Tatra swatwameva tâvannirūpyata iti** (p. 73. l. 15). *Here the right of ownership itself is being explained* &c. (p. 172 l. 23.) Here, the subject is the right of ownership. Then a doubt (arises) : Is the right of ownership solely within the range of *Śâstra*, or is it also affected by other popular indicia of evidence ? The Author sets out this very point : **Kim śâstraikasamadhigamyam iti** (p. 73. l. 15). *is deducible from Śâstra alone &c.* (p. 172. l. 27.) The Author takes the side of the objector : **Tatreti** (l. 16). *here &c.* (l. 26). The Author states the cause : **Gautamawachanâditi** (p. 73. l. 16.) *on account of the text of* **Gautama** &c. (p. 173. l. 27). The Author sets out the same text ; **swami riktheti** (p. 73. l. 16.) *an owner is by inheritance &c.* (p. 172 l. 28.).

The Author points to a fault in the reasoning which would indicate other popular causes : **Pramâṇântaragamyatweti nedam wachanam** (p. 73. l. 18.) *if......from other (means of) proof this text would not &c.* (p. 123. l. 1.) This *i. e.* the text of **Gautama**, will not have a meaning. This is the import.

---

1 *i. e.* birth itself gives rise to the right of ownership. This birth-right of a member of a joint family is the corner stone of the Mitākṣharā joint family which is founded however on Yājn. II. 124. भूर्या पितामहोपात्ता &c.

The Author points to a defect in the view that the right of ownership is a worldly matter. **Api cheti** (l. 21.) *moreover* &c. (p. 173. l. 9.) There the reason is **Apahartureva swatwâditi** (p.73. l. 22.) *the ownership would be with the trespasser himself* &c. ( p. 173. l. 12. ) The Author notes a special objection **Atheti** (l. 22.) *now* &c. (l. 12). The Author refutes it : **Evaṃ tarhīti** (l. 22.) *then* &c. (l. 14.)

This is the import: If the (right of) ownership were a worldly matter then when the ownership of one is taken away by another, and if he who has been deprived says 'my own has been taken away by him', then among the assessors[1] who hear this there would be no doubt, viz. whether it is his, or that other's. As in worldly transactions, by the sight of the form of gold, silver and the like, there could be no doubt whether it is gold or the like, or not, so even as regards ownership there would be no doubt, by reason of the right of ownership being a worldly matter. But a doubt is produced ; therefore it cannot[2] be said that the ownership cannot be with the trespasser. Or, when the plaintiff says since he has taken (a thing of) the ownership itself of another, the right of ownership cannot be of the trespasser he should be asked—"would not a cognition arise that the ownership may or may not be of the trespasser". So anticipating, the Author refutes the first: **Evam tarhīti** (l. 22.) *thus then* &c. (l. 14). The import is this: As with the accession of knowledge, that this is gold and this is silver, no doubt arises as to the nature of gold and the like, so in the present case also. Nor also the second. By the very appearence of the knowledge, it would be impossible to assert that the right of ownership cannot belong to the trespasser. So refuting it at the very outset, the Author sums up the objection : **tasmâditi** (l. 23.) *therefore* &c. (l. 16.)

PAGE 44.

The Author states the conclusion : **Atrochchyata iti** (p. 73 l. 24) *to this the answer is &c.* (p. 173 l. 18). The Author mentions inference as a source for (the proposition that) 'ownership is a worldly matter' : **Laukikameva swatwamityādinā** (l. 24.) *ownership is temporal only &c.* (p. 174 l. 18). The inference is thus: ownership is temporal, as[3] it is the means of proof of a worldly object. For, whatever is a means of establishing a worldly object is worldly, as in the case of rice etc. Similar is the right of ownership, and therefore it is worldly. What-

---

1 Lit. the hearers, the audiance. The other reading is श्रोतृणां.

2 *Add* the following after अतोऽपहर्तुः स्वं न भवतीति on p. 43. l. 34.—वक्तुं न शक्यते । अथवा परस्यान्यस्य स्वमेव गृहीतम् अतोऽपहर्तुः स्वं न भवति'इति वदन् वादी प्रष्टव्य, अपहर्तुः स्वं न भवतीति.

3 लौकिकार्थक्रियासाधनत्वात्.

ever is not worldly, cannot also become the means of proof of a worldly object, as is the case with the *Āhawanīyatweti &c.* Thus the Author points the concommittance by the negative method: **Āhawanīyâdīnām-twiti** (l. 24) *as regards the āhawanīya &c.* (p. 174 l. 24)

The Author now states an objection (based on the rule) that an inference not tested by the negative reasoning is no means of proof. **Nanvāhawanīyādīnâm iti** (p. 73 l. 25) *indeed, even the Āhawanīya &c,* (p. 174 l. 23). By reason of the fact that even in the case of the *āhawanīya* non-temporal as it is, it is still the means of things temporal such as cooking and bursting etc. the rule of the negative concommittance viz. whatever is not temporal is not[2] the means of proof of things temporal-becomes vitiated. This is the meaning.

The Author sums up by **Naitat** (l. 26) *not so* (p. 173 l. 25). This is the argument: Of the *āhawanīya* and the like there are two kinds, the non-temporal i. e. being *āhawanīya,* and the temporal i. e. simple fire, and thus the boiling[3] of food is done by the temporal fire and not in its character as the non-temporal *āhawanīya* and the like, for if that were so, the boiling of the food would not be done by the temporal fire, which is without the characteristics of the non-temporal *āhawanīya* and the like. Therefore there is no vitiation of the rule of concommittance by the negative method.

It may be said, indeed, in the present case also let the worldly transactions such as the purchase or sale of gold and other things be by means of the form of the gold &c, and not by right of ownership. Anticipating this, the Author says: **Iha tu suwarṇâdirûpetyādinā** (p. 73. l. 27) *here, however,......visible form either of gold or the like &c.* (p. 174 l. 1.)

Among people such as the *Mlechhas*[4] and the like, ignorant of the procedure in the *Śâstra* such as the transactions based on ownership, are seen. Therefore an absence of a genesis thereof in any other way is

---

1. p. 44. l. 10. Read तच्च लौकिकार्थाक्रियासाधनामिति &c.
2. *i. e.* the concommitance of the two negations e. g. यत्र वन्हिर्नास्ति तत्र धूमोऽपि नास्ति as opposed to the अन्वयव्याप्ति viz. यत्र यत्र धूमस्तत्र तत्र वान्हिः।
3. पाकसाधनत्वं. There is an entirely different reading of this passage in some copies e.g. Setlur p. 595. ll. 9. 11. It isthus: अयमभिसन्धिः। आहवनीयस्य द्वे रूपे। आग्नित्वमाहवनीयत्वं च। तथा च आद्येन लौकिकार्थक्रियाकारित्वेपि द्वितीयेन न तथात्वे (तथा सत्यलौकित्वं &c).
4. In the Mitākasharā the expression is प्रत्यन्तनिवासिनः। Here the word used is म्लेच्छ. The lexicon of Amara has प्रत्यन्तो म्लेच्छदेशः स्यात् II. l. 7. चातुर्वर्ण्यव्यवस्थानं यस्मिन्देशे न विद्यते। तं म्लेच्छविषयं प्राहुरार्यावर्तमतःपरम् &c.

also an evidence that ownership is temporal. Anticipating this the Author says: **Api chetyâdinâ** (p. 73 l. 28) *beside* &c. ( p. 174 l. 5 )

By saying that 'use of property is seen,' it comes to be said that the use of property is likely to[1] give rise to the inference that ownership is temporal. Here, the Author refutes an objection as to the inference necessarily arising from the context viz. an absence the ownership which was (inferentially) assumed **Krayavikrayâdiriti** ( l. 29 ) *purchase, sale and other* &c. ( p. 174 l. 8. )

**Tathâ hi lipsâsūtre[2] tṛtīyawarṇaka iti** (p.74. ll. 1–2.) *moreover in the third clause of the Lipsā Sûtra* ( p. 174. l. 13. ). In the first *Pāda* of the Fourth *Adhyaya* the aphorism in the Second *Adhikaraṇa* is as follows "In which there is a desire of a man and that desire is indicated by (a certain) object (which is) inseparabely connected (with it)." There, in the first part is the consideration of the characteristics of the *Kratvartha* and the *Purushārtha*; in the second (is the discussion) whether the milking of cow is *Kratwartha* or *Purushārtha*. In the third *varṇaka* however is the following discussion:

Bearing no particular[3] context are laid down in the *Śruti* the rules for the acquitition of wealth thus; "A Brāhmaṇa should obtain wealth by acceptance of gifts &c.; one of the kingly order by conquest and the like; and a *vaiśya* by agriculture and the like". There comes up a doubt, are these rules in the nature of *Kratwartha* or of *Purushārtha?* The objector would maintain that, although they have been stated without a context, if the rule regarding the acquisition of wealth be not accepted as *kratwartha* there would be an absence of the person for whom they are directed, and there would be the misfortune of the rule regarding the acquisition of wealth being meaningless, also of the mutifariousness of the agents, and so through the instrumentality of wealth which sets the agent on, it is proper that these (rules) should be regarded as *kratwartha*.

It may be said, indeed, this objection itself cannot come up; as there would be no accomplishment of the *kratu*. For, if the rules regarding the acquisition of wealth were regarded as *kratwartha*, then by reason of the fact that[4] ownership is not created by temporal causes, and there being no other cause mentioned in the Vedas, the causes such

1. कल्पक: 2. This is called the Lipsâ Sûtra. See note 3 p. 174. Mitāksharā English Translation. See also note. 8 on p. 65-66. Vyawahāra-Mayūkha Eng. Tr. यस्मिन्कृते पुरुषस्य प्रीतिरुपैति स पुरुषार्थः। क्रतवे यः स क्रत्वर्थः। Śabara.
3. i. e. a detached statement, not bearing any reference to any subject or context,
4. For स्वत्वस्यालौकिक read स्वत्वस्य लौकिक &c. on p. 44. l. 29.

as acceptance and the like which are restricted, being *Kratvartha* relate to another subject, and a result without a cause not being obtainable, ownership itself will not be produced. Then, there being no ownership there will be an absence of *Kratu*, since the accomplishment of the *kratu* can be effected only with what is one's own and not by any[1] other. The Answer is, not so; the ownership of wealth acquired by acceptance and the like from birth is well-established among the people, and thus among the people it is established by ancient usage.

It may be said, indeed, there is no relationship whatsoever which produced by acceptance is appreciable[2] by a measure which is dealt with as ownership. The answer is, no, not so. The relationship which exists between the acquirer and the acquired by reason of the acquisition is the relation between ownership[3] and the owner, and that itself is the right of ownership; and that moreover does not require a separate measure, since the relation of the actor and the object centering in the action is well established among the people. It must not, moreover, be supposed that on account of a deterioration of the act of acquisition, there would be also[4] a loss in the form of the resultant as the related source is unaffected—never is fatherhood affected by a deterioration in the acts of a father.

PAGE 45*

Therefore ownership being temporal, and on account of the fact that by ownership alone[5] is a *Kratu* accomplished, it has been established that the rules regarding acquisition are *Kratwartha*. The established conclusion, however, is that when one entitled is set on acquiring wealth and it is obtainable by money, it is not proper to imagine the rules regarding the acquisition of wealth to be included in the *Kratu*. Moreover one intent on the acquisition of wealth having begun[6] at his pleasure, is not disposed to be amenable to restrictions. Therefore, the purpose of an injunctive rule being control, the rule such as 'a Brāhmaṇa should acquire wealth by acceptance etc.' and the like is not without a meaning.

Moreover when acquisition is made for a *Kratu*, the whole of the acquisition in its entirety is for the *Kratu*, and therefore there being no means of subsistance, the entire *Kratu* may become extinct. There-

---

1. The other reading is नास्वन which means the same thing. 2 मानगम्यः
3. on p. 45. l. 1. for स स्वामिसंबंध read स्वस्वामिसंबंधः
4. For तज्जन्यस्वरूप &c. in l. 2. on p. 45. read तज्जन्यस्वत्वरूप &c.
5. On p. 45. l. 3. for स्वेन च read स्वेनैव.
6. On p. 45. l. 6. v. l. धनकामाधिकारी च रागात् प्रवृत्तो न नियतं प्रवर्तते ।.

fore rules are for a *Purușhârtha.* In case of an infringment of a rule, the fault is of the person, there would be no defect in the *Kratu.* According to the objector, however, the rules being *Kratwartha,* by any infringement thereof there would be a fault in the *Kratu.*

We resume the point under discussion. It has been said that those conversant with the science of reasoning deem ownership[1] as a matter of popular recognition viz: **Tathā hi lipsā sūtra ityādinā** (p. 74.) *because, in the lipsāsūtra* (p. 174 l. 12).

There, the Author sets out the statement of the objector that the rules regarding the acquistion of wealth are *Kratwartha,* beginning with **Drawyārjananiyamānām** (l. 2) *of restrictions relating to the acquisition of wealth &c.* (p. 174 l. 14) and ending with **Pûrwapakșhâsambhawamáśankya** (l. 3) *anticipating an untenable objection &c.*

This is the import: In the third part of the lipsā sūtra the point for consideration is whether the rules regarding the acquisition of wealth are *Kratwartha* or *Purușhārtha.* There the objector maintains that they are *Kratawartha.* That does not hold. For, if the rules regarding the acquisition of property were regarded as *Kratwartha,* the ownership being non-temporal would not be productive of worldly causes, and there being no other means mentioned in the *Vedas,* and the rules regarding the acquisition being *Kratwartha,* and thus being for another object, the right of ownership itself does not arise. Moreover, the right of ownership being absent and by non-ownership a *Kratu* not being accomplished, the position of the objector that the rules are *Kratwartha* does not hold.

The Author supports the objector's position. **Drawyārjanasya pratigrahādineti** (p. 74 l. 3.) *of acceptance of wealth and other modes of acquisition &c.* (p. 174 l. 16). This is the argument: The rules regarding acceptance and the like, by the very fact of securing ownership, become *Kratwartha* through the wealth requisite for a *Kratu,* as the act of striking while separating the husk becomes *Kratwartha* through the paddy useful for a *Kratu.* That ownership, moreover, aged people regard as established in popular recognition just as sonship &c. is. Therefore there is no absence of the accomplishment of a *Kratu.*

It may be said, indeed, let acquisition be a means of (establishing) ownership; (but) the rules regarding acquisition being *Kratwartha,* the acquisition itself is *Kratwartha,* and thus having a reference to another

---

1. स्वत्वं लौकिकं.

object the right of ownership itself will not occur, the absence of a *Kratu* is to be found to be there itself. The Author sets out this objection : **Nanu Cheti** (p. 74. l. 4.) *indeed, moreover* &c. ( p. 174. l. 18. ). The Author refutes it : **Pralapitamidamiti** ( p. 74. l. 5. ) *it is a blunder* &c. ( p. 175. l. 1. ) **Arjanaṃ swatwaṃ Nāpādayatīti** ( p. 74. l. 5. ) *that acquisition does not produce proprietary interest* &c. ( p. 175. ll. 23. ) Thus saying some one has committed a blunder. Whence? **Vipratiṣhiddhamiti** ( l. 5. ) *is a contradiction* &c. ( l. 3. ) Thus is to be the construction.

This is the meaning : Acquisition is a quality of the acquirer in a relative form. That has a relation to the two, such as in the case of father and son. Moreover acquisition not being possible to be effected without the thing to be acquired, it is a contradiction in terms to say that 'acquisition does not produce proprietary interest', just as to affirm 'my mother is a barren woman'.

**Vichâraprayojanamuktamiti** ( p. 74. l. 6. ) *proceed to explain the purpose of the disquisition* &c. ( p. 174. l. 6. ) i. e. the disquisition of the topic. The Author indicates the nature of the purpose : **Ato niyamâtikrama iti** ( p. 74. l. 6. ) *therefore, a breach of the restriction* &c. ( p. 178. l. 7. ) The meaning of the text dealing with the aforesaid purpose has been explained by the Guru. The Author states that meaning, beginning with **Asya chârtha evaṃ wivṛta** ( p. 74. l. 7. ) *and the meaning of this passage is thus expounded* &c. ( p. 175. l. 7. ) and ending with **Puruṣhasyaiwa niyamâtikrame na doṣha**[1] ( l. 8. ) *would not affect the man if he deviates from the rule &c* ( p. 115. l. 15. )

PAGE 46*

This is the meaning in substance : According to the objector, there is no fault if a man deviates from the rules ; but, by means of the wealth acquired in deviation of the rules a *Kratu* would not be accomplished. So there would be a defect in the *Kratu*. According to the demonstrated conclusion, however, as the rules relate to *Puruṣhârtha*, any deviation therefrom would mean a fault of the man ; but there would be no defect in the *Kratu*.

The Author states the meaning of the net result : **Niyamâtikramârjitasyâpîti** (p. 74 l. 10) *even what is gained by infringing restrictions etc.* (p. 174 ll. 19-20). **Anyathâ kratusidhyabhâwâditi** (l. 11.) *otherwise there would be no completion of a religious ceremony* &c. (p. 124. ll. 20. 21.) Otherwise in the case of property acquired by infringing the restriction, there being no ownership, and the restrictions being (in-

1. On p. 45. l. 32 for नियमातिक्रमे दोष read नियमातिक्रमे न दोष.

tended) in relation to a religious ceremony the ownership also being non-temporal, owing to the absence of a worldly ownership, even living would be difficult, and therefore on account of the absence of the performer, there would be an absence of the *kratu* also. This is the meaning.

The Author now anticipates an objection: Indeed if there be ownership even in acquisitions made by infringing restrictions, then it would happen that there would be ownership even in acqusitions by theft &c.....and refutes it: **Na chaitāwatetyādinā** (1. 12.) **Jnāteṣhu jnāyate swāmīti** (1.18.) *from what has been said below, it would not be* &c. (p. 175. l. 22.); *if they are known, he becomes proprietor* &c. (p. 170. ll. 2-3). The clause 'if these reasons exist follows. The meaning is if these reasons are known[1] (to exist) he is known as the proprietor.

The Author extends the rule propounded to another case also: **Evamanulomajānāmapītyādinā** (p. 74. l. 24.) *Thus ...in the case of mixed classes in the case of direct...order* &c. (p. 176. ll. 17-20.)

The Author anticipates an objection viz. under the texts 'the wife the daughters' and the like, in the absence of the owner by propounding the ownership of the wife and the rest, these texts run counter to the temporal character of ownership,—and so he refutes it by **Yadyapi patnī duhitaraschetyādinā** (p.74. l.24). *As for the precept......the widow and the daughter* &c. (p. 176. l. 26.)

The Author now pursues the argument with a view to refute the objections raised by the objector in connection with the temporal character of ownership: **Yadapi mama swamiti** (l. 26). *As for......my property &c.* (p. 177. ll. 1-2). This is what comes to be said: If property be temporal, it could not be said 'my property has been taken away by him' since the ownership becomes of the trespasser himself. If it could be said, then when it is alleged 'my property has been taken away by him', a doubt may arise among the assessors. That does not hold, just as would be in regard to the form of the gold and the like.

The Author refutes it by **Tadapyasat** (l. 27) *that is not accurate* &c. (p. 177. l. 3). This is the meaning:—In a place like this, a mere cognition arises that a thing owned by another has been taken by him. It is cognition[2] based on the strength the statement of the informant; it is not

---

1. The Mitāksharā reading is क्रुतेषु ज्ञायते स्वामी.
2. P. 46. l. 17. for प्रतीतिः read प्रमितिः

certain[1] knowledge. Moreover, on account of the conflict, a doubt[2] is produced whether this was taken away by him or obtained by purchase and the like (means). And, thus, owing to a doubt regarding the causes of ownership by purchase &c. even if ownership has been produced as a result a doubt occurs.

Indeed, the temporal character of owership has been well explained (by you). Still it is improper in the chapter on distribution where (the discussion as to ) the temporal and non-temporal character of ownership is inappropriate. Anticipating this, the Author says: **Vichâraprayojantwityâdinâ japyena tapasaiva chetyantena** (p. 74. l. 29). beginning with *the purposes of the disquisition &c.* (p. 177. l. 7.) and ending with *by prayer and by rigid austerity &c.* (l. 9.) While expounding the meaning of the text 'by a blamable act &c.' the Author points out its usefulness in both the objection and the established conclusion by **Śâstraikasamadhigamye** (p. 74. l. 30) *if it be deducible only from Śâstra &c.* (p. 177. l. 10).

It may be said, indeed, it is proper that the consideration of a desired subject should be in accordance with the object intended. If it be said that the consideration may also be in accordance with a different reason, then we do not see that different reason. For, is it the relation of cause and effect, or is it easy as in the maxim[3] of the needle and the kettle, or something else ? There, (the answer is) not the first, the topic to be discussed not being contemplated by the worldliness of ownership, nor the second, as the worldliness can be established by a multiplicity of argument, and not the last, as it is not even seen. Therefore wishing to refute the objection that the considerations already made and to be made are misplaced, the Author takes up the consideration stated first : **Idânîmidam[4] sandihyata iti** (p. 75 l. 2) *next, it is doubted etc.* (p. 177 l. 24).

This is the import : Partition also is a worldly matter, only the rules regarding it are non-worldly. Birth and the like are also worldly matters. And thus it is only when the worldly character of ownership

---

1. प्रतीतिः as opposed to प्रमितिः
2. For कारणसंदेहो read कारणात् संदेहो।
3. सूचीकटाहन्याय The maxim of the needle and the kettle or cauldron. It is used to denote that when two things, the one easy and the other difficult, are required to be done, the easiest should be attended to. यथा लोहकारं प्रति पूर्वं कश्चित् कटाहोत्पादनार्थी ह्यागतः पश्चात्सूच्युत्पादनार्थी प्राप्तः तत्र लोहकारः प्रथमं कर्तव्यत्वेन प्राप्तमपि कटाहं बहुकालसाध्यत्वात्परित्यज्य पश्चात्कर्तव्यतया प्राप्तामपि स्वल्पायकालसाध्यां सूचीं प्रथममुत्पादयति तथानेकेषु पदेषु व्याख्येयेषु प्रथमपठितमपि बृहद्वाक्यं परित्यज्य मध्ये चान्ते वा पठितं स्वल्पं वक्तव्यं व्याख्यायते.
4. P. 46. l. 29. add इदमिदं संदिह्यते इति.

is established that its being produced by partition and like other worldly transactions holds, not otherwise. Therefore, The consideration of the worldliness included in ownership is the reason. This consideration therefore has a reason and therefore the inclusion of that in this consideration is proper. And from this very object is the statement 'next' &c.

**Jâtaputrasyâdhânavidhânâditi** (p. 75 l. 5) *since a man to whom a son is born is enjoined etc.* (p. 177 l. 27). The meaning is that since an injunction for maintaining the holy fire has been laid in the Śruti text "one to whom a son is born, with black hair, should consecrate the holy fires." The meaning of this clause is this : 'One to whom a son is born' i. e. one who has an issue. The word son is indicative, by an extended inclusion, of the issue. 'With black hair,' i. e. one in youth i. e. to say competent i. e. one thus entitled should consecrate fires.

*PAGE 47

Indeed, this text lays down a rule for consecrating and maintaining fires, and does not demonstrate that ownership arises by distribution. Anticipating this and desiring to maintain that it does intend that, the Author says **Yadi janmanaivetyâdinâ** (p. 75 l. 4) *if by birth alone etc.* (p. 177 l. 28).

The import is this : If ownership be by birth there being ownership in wealth of one by mere birth, and wealth being common property there would be want of the authority for acts like the consecration of fires which can be preformed by the husband and wife alone

By the term 'Ādi'—etc—. are included acts which must be performed such as the *Srâddha* and the like.

A prohibition necessarily contemplates things already existing, and therefore if ownership be taken to be by birth only, there would be no partition of an affectionate gift, and its prohibition also does not hold, so the Author says : **Tathā vibhāgāditi** (p. 75. l. 6.) *likewise...to separation* &c. (p. 177. ll. 31-32.)

Indeed, if there be wall then would painting pictures be possible, and a prohibition of that character would itself not exist. Anticipating this, the Author points out the prohibitary text: **Yathāha Sauryabhāryādhana iti** (p. 75. l. 7.) *as says, the gains of valour and the property of the wife* &c. (p. 178. ll. 1-2.)

Moreover, if ownership were by birth only, there would be the right of ownership existing of one immediately after birth, his permis-

sion being also impossible and wealth being common property, it being impossible for one to give, there would also be an absence of an affectionate gift, the text demonstrating an affectionate gift also would be contradicted, so the Author says: **Tathā bhartrā prītena Yaddattamityādinā** (p. 75. l. 8.) *so what has been given by the husband when pleased &c.* (p. 178. ll. 4–5.)

Again it may be said, indeed, there is no contradiction with the text regarding affectionate gifts; on the other hand that text is even favourable. For the order of words should be taken thus–Excepting the immovables what has been given to the wife by the husband, when he is dead that she may enjoy at pleasure. And, moreover, by reason of the prohibition of an affectionate gift, ownership from the very birth having been established, and on the analogy of this a similar rule being induced as to other kinds of property, an affectionate gift of property other than immovable can become possible under the text, why then the text that it should not be done ? Anticipating this, the Author says : **Na cha sthāwarādṛte yaddattamiti** ( p. 75. l. 10. ) *nor is...excepting immovable property...what has been given* &c. (p. 178. ll. 8–10).

The substance of the refutation here is this: If the order of words is thus, let it be so. By taking the order of words in this way there would be disjointedness, and the construction would not be straight, and this order itself does not hold, and so by taking the connection of the two clauses not in a disjointed manner alone a prohibition of an affectionate gift would occur regarding the immovables, birth is certainly the cause of ownership and not distribution. Anticipating this the Author refutes it : **Yadapi maṇimuktāprawālānāmityādinā** (p. 75. ll. 10–11) *as for—of the gems, pearls and corals &c.* (p. 178. ll. 11–13). This is the import: By reason of acquisition, what has been acquired becomes the property of the acquirer. That, morever, becomes possible upon a partition of those connected with it such as the sons and the like, or by the death of the owner. There, when the owner is living, partition is the cause of ownership. When, however, the owner is dead, the death of the owner itself is the cause of ownership. There also this is another special[1] point : when there is only one son or one grandson, the death of the owner is the only particular cause of (creating) ownership; in a multiplicity of sons and the like, by the death of the owner, it becomes the common property ; and by partition, of each individual. In this state of things, upon the death of the owner the grandfather, before partition there is an absence of an individual right of the father, and

1 P. 42. l. 21. vl. अर्थविशेषः

hence the prohibition about a freindly gift of the immovable property of the grand-father, and not of the self-acquisition, since birth itself is the cause of ownership.

It may be said, indeed what is this disparity in the[1] interpretation in the grandfather's immovables a general common ownership, while not so in the gems, pearls &c. Anticipating this and wishing to propound an answer that this is controlled by a (special) text, the Author says **Atîte pitâmahe** (p. 75. l. 13) *after the grand-father is dead &c.* (p. 178. l. 18.) Since the death of the owner also is the cause of ownership, hence also after the demise of the father and before partition that property is not treated with indifference as if it were the property of some one else, so the Author says : **Ata eva piturûrdhwamiti** ( l. 15 ). **pitṛprayāṇāditi** (l. 17). *Accordingly after the death of the father* &c. (p. 178. ll. 23-26) ;— *by the father's departure* (l. 28). *i. e.* the father's demise.

To the objection thus laid, the Author enunciates a *reply* : **Atrohcchyata iti** (l. *4*) *to this the answer is* &c. ( p. 178. l. 30. ). The Author cites the text of **Gautama** for (the view that) ownership (is) by birth, **Tathâ chotpatyaiveti** ( l. 19.) *likewise...by birth simply* &c. (p. 179 l. 31.). The meaning is that as ownership of wealth occurs by birth, he obtains that wealth.

The text 'of the gems, pearls and corals &c.' fits in only with the view of the conclusion ; intending this, the Author says : **maṇimukteti** (l. 20.) *of gems, pearls* &c. ( l. 5. ).

What has been stated by the objector that the whole of this text is applicable to another meaning, is not correct so the Author says : **Na cha Pitâmaheti** ( p. 73. l. 21. ) *nor...that from paternal grand-father* &c. (p. 179. ll. 5-8.) This is the import : The demise of the owner being also regarded as a cause of ownership, after the demise of the grand-father, his property being the common property of the father and the son, under the text "the gems, pearls and the like" are father's, but as to the immovables their interest is common. Thus, if this meaning is deducible from that text, then the adjustment stated before can hold ; but it is not so. Therefore it must be thus stated : Even

PAGE 48*.

while the grandfather is living there is common property of all in the immovables. And then this text would be inappropriate as referring to the immovables that devolved from the grandfather.

Anticipating an inquiry as to how it could be inappropriate the Author states a cause : **Na pitâ na pitâmahaḥ iti wachanāditi**

1. K. अर्थवैषम्य. Another reading's अर्थवशात्.

(l. 20.) *since the text expresses 'neither the father, nor even the grandfather'* &c. (p. 179. ll. 8–9.) The meaning is that if the text relating to the immovables has a reference only to the acquisitions from the grandfather, then while he is living, the text stating the absence of ownership in the[1] self-acquisitions is inappropriate.

The Author points out that the two texts viz. gems, pearls &c. relate to the right of ownership by birth : **Pitâmahasya hiti** (l. 22) *that the grand-father's* &c. (p. 179 l. 9).

When ownership is by birth the right of ownership being common to all, how can there be an affectionate gift of this (common) property ? Wishing to propound an answer that it would be from the prohibitory[2] text, the Author says: **Paramata ityâdinâ** (l. 23) *according to the other opinion* &c. (p. 179 l. 11). This is the import : Excepting immovables, things acquired by self can be given through affection by the father even without consent equivalent to permission.

Indeed, if it be so, then by propounding an affectionate gift of the immovables also it may be said that there would be a contradiction with the text of **Vishṇu**, so the Author says **Yattu bhartrâ pritenetyâdi Vishṇuwachanamiti** (p. 75 l. 25). *As for the text of Vishṇu—by the husband when pleased* &c. (p. 179 ll. 17–18). This is the substance: As regards immovables even if self-acquired, without the consent of those competent[3] to give consent or deserving of consent, there is no right to give. As regards others no consent is necessary. The Author states the reason for thus interpreting the text of **Vishṇu** : **Pûrwoktairiti** (p. 57 l. 26) *by the texts above cited* &c. (p. 179 l. 21).

What has been said (above) that one to whom a son is born may not have a consecrated fire, there the Author says: **Yadapyarthasâdhyeshwiti** (p. 27.) *as for...which require for their accomplishment wealth* &c. (p. 179. l. 25.) The meaning is that the authority is from the text.

What has been stated[4] from a general text that in regard to immovables, self acquired as well as acquired by the father, the father is dependent upon sons and the like, is qualified by a particular text, so the Author says : **Asyâpawâdaḥ ekopi sthâware kuryâdityâdinâ** (p. 76. l. 1.) *An exception to this. Even a single individual may conclude...of immovables* &c. (p. 180. ll. 13 40.)

---

1 on p. 48. l. 3. add after स्वोपार्जित add तस्य.  2 v. l. प्रतिबन्धात्.

3 There is a mistake in the print here; read thus ह्यनुज्ञासमर्था अनुज्ञार्हसर्वानुमतिमंतरेण.

4 V. L. उक्तं.

Indeed to the text "Even a single individual may conclude...of immovable property" an exception is seen in the text "separated or unseparated". Anticipating this the Author says that this text does not entirely obstruct the authority of one individual for gift and the like, and that a gift and the like transaction would not[1] be complete without the consent of the undivided as the property is common. Without the consent of the divided, however, gift and the like transactions are accomplished, but their consent is mentioned only for facility of transactions by the donees and the like, and so the Author proceeds : **Yattu wachanam wibhaktâwetyâdinâ** ( p. 76 l. 4–5 ). *As for the text separated or &c,* ( p. 181. l. 5 ).

It has been stated that " land passes by six ( formalities )". Of these six, desiring to indicate the use of the six in order, the Author first shows the reason for the consent of the townsmen: **Tatrâpi grâmânumatirityâdi** ( p. 76 l. 9. ) *even there the consent of the townsmen* &c. Thus in their order the use of others should be noticed in the book itself.

Having before put together for the exposition of the chapter ' at what time', 'of what', 'how', and 'by whom' should a distribution be made, the portion 'of what' has been demonstrated at great length. Now desiring to expound the other parts, the Author introduces the original verse by **Idânîm Yasmin Kâla iti** ( p. 76. l. 17. ) *now at what time* &c. ( p. 182. l. 16 ).

---

## Yâjñavalkya Verse 114.

Intending that in the expression ' sons' the plural number is not particularly intended, the Author says **Putram putrâu putrâniti** (p. 76. l. 20 ). *One, two, or more sons* &c. (p. 182. l. 25.) Of the text of **Manu** viz. "The additional share for the eldest shall be one-twentieth" &c. the Author himself will expound the meaning[2] viz. 'The sons should divide &c.—(after) the parents &c.'

The Author states the import of the word *Wâ* (either) in the text of the **Yogîswara** " Either (separate) the eldest with the best share." **Wâsabdo wakṣhyamâṇapakshâpekṣha iti** (p. 76. l. 25) *The term either (wâ) is relative to the subsequent alternative* &c. (p. 183. l. 3).

It should be seen that by the text 'if the father makes a partition' a partition takes place even while the father is livng at the father's

---

1 V. L. कृतावसिद्धिः साधारणत्वात् द्रव्यस्य.

2 In (the commentary on) verse 117.

pleasure has been included the inquiry 'at what time a partition'? By the word 'father' is included an answer to the question 'by whom'? And by the text 'either...eldest with the best share' has been shown 'how'?

Four periods for a partition of *property acquired by* the father: Thus while the father is still living, when the father desires a partition, that is one period; when the mother has ceased to menstruate and the father is disinclined to carnal pleasures and is indifferent to wealth, then even while yet the father is living and although when the father is not willing, but the son desires, that is another (period); the next is after the demise of the father; and when even yet the mother is menstruating and even when the father is unwilling, but when he has grown old or behaves contrary to duties,or is suffering from an incurable disease, even when he does not desire but if the son desires, is the last.

PAGE 49

There, presently, the Author states about the first period: **Vibhâgaṃ Chet pitâ Kuryâditi yadâ pituriti** (p. 76. l. 28.) *under the text if the father make a partition &c, when the father &c.* (p. 183. l. 10.) The Author indicates the second: **Aparo jîwatyeweti** (l. 29.) *another-even-when living &c.* (p. 183 ll. 11–13.) **Atra putrâḥ samaṃ dhanaṃ wibhajeyurityanuṣhajjyata iti** (p. 77 l. 3.) *the words let the sons divide the wealth equally are understood &c.* (p. 183. l l. 22. 23.) By the word 'here' is meant the aforequoted text of **Nârada** viz. 'when the menstruation of the mother has ceased &c'.

The Author points out the first, second, and third methods in an inverse order: **Gautamenâpîti** (p. 77. l. 3.) *by Gautama likewise &c.* (p.183. l. 23.) The Author mentions the fourth: **Tathâ sarajaskâyâmapîtyâdinâ** (p. 77. l. 2.) *so when the mother is capable of bearing more issue &c.* (p. 183 ll. 26. 27). From here the exposition of the entire verse is easy.

Above have been pointed by the Author of the commentary four periods for a partition for the sons. These have been incorporated two-fold by the **Yogîswara** 'when the father is living &c.' There 'when the father is living' three occasions are possible. These are as under: At the father's desire. Even when he does not desire the period is when the mother has ceased to menstruate and the father has become disinclined to pleasure and the like is one, and when the mother has not ceased to menstruate, but the father is given to acts against *Dharma* and the like is another. All this has a reference to the maker[1]. The rule as to the mode, moreover, has been sufficiently pointed out by the text 'If the father makes a partition &c."

---

1 i. e. of Partition.

The Author now introduces texts laying down the time, the makers, and the mode of partition, after the demise of the father : **Idânîm wibhâgasya Kâlântaramiti** ( p. 79. l. 1. ) *next another period of partition &c.* ( p. 186, l. 20 ).

---

## Yâjñawalkya Verse 117.

The Author points out at details the nature of the rule itself **Samameveti** (p. 78. l. 4) *equal only* &c. (p. 186. l. 30).

It may be said, indeed, under the texts of **Manu** and **others** laying down the rule as to an unequal partition, an option as to an equal or unequal partition is just, and a restriction that it must be equal does not hold : Anticipating this, the Author says : **Nanūrdhwamityâdinâ samameva wibhajeranniti niyamyata ityantena** (p. 78. l. 4 ; ll. 15–16) Beginnig with *but after the death &c.* (p. 187. l. 1.) and ending with *a restriction introduced requiring that 'sons should divide only in equal shares'* (ll. 26–27).

'Even though permissible under the law, if abhorred by the people, one must not practise it, since that will not procure the celestial bliss,' thus has been stated a reason against an unequal partition. There, the Author points out an illustration from the *Smritis*: **Yathâ mahokṣhaṃ weti** (l. 18.) *as e. g. a big bull* &c. (p. 188. l. 1). The Author points out an instance from *Śruti*: **Yathâ maitrâwaruṇiti** (l. 19) *as...consecrated to Mitra and Varuṇa* &c. (p. 188. l. 4.). The meaning of this : consecrated to the deities Mitra and Varuṇa a barren cow *i. e.* who is incapable of yielding progeny should be slain as a victim.

The Author points out a text prohibiting an unequal partition and accompanying the instances from *Śruti* and *Smṛti* already stated : **Uktaṃ cheti** ( l. 20 l. 9. ) *it has also been said &c.* ( p. 188. l. 5 ). Its meaning: 'Another' *i.* e. the rule regarding 'appointment' ; 'the injunctive rule' *i. e.* one laid down in an injunctive text such as about the slaughtering of a big bull or a great goat, also about the slaughter of a barren cow as a victim, as this Rule does not exist ( now ) so an unequal partition also does not exist.

**Deśaviśeṣhe suwarṇaṃ Kṛshṇâ gâwa ityâdi** ( l. 23 ). *in particular countries, gold, black cows &c.* ( p. 188. l. 15 ). The meaning of this : In a particular country, gold, black cows, and the black produce from land, *i. e.* grown up in the land, such as the corn of barley &c. Some understand by 'black produce of the earth' as 'black iron'.—This

is for the eldest son : The father's chariot, furniture in the house—*i. e.* such furniture *e. g.* articles, such as a chair[1] &c. so also an ornament worn by the wife, as also property as may have been acquired from relations, as from the father and the like, that property becomes the share respectively of the eldest son, and of the fathers' wives. Thus has **Āpastamba** pointed out himself. This is the meaning.

**Manuḥ putrebhyo dāyamiti** ( p. 78. l. 26 ). *Manu...heritage among his sons* &c. ( p. 188. l. 21 ). The meaning of this : By Manu is meant generally.

Even if there be a residue from the property of the mother, sons have no right while the daughters are living, and therefore their non-liability for the mother's debts and the mother's property whether equal to or less than the debts incurred by the mother is not subject to the rule in the text "Sons should divide after the father &c." Intending this the Author says : **Ataśchṛṇasamamiti** ( l. 30 ) *hence...equal to... debts &c.* ( p. 189. l. 5 ). As the residue of the mother's property after ( the payment of ) debts is not liable to partition when the daughters and the like are living, so when there are no daughters, that property even if equal to or less than the debts is not liable to partition. This is the meaning.

**Prattâpratteti** ( p. 79. l. 6. ). *Married and unmarried &c.* (p. 189. l. 19. ). *Prattā i. e. married. Aprattā–maiden.*

---

## Yājñavalkya Verses 118 and 119.

PAGE 50 The Author supplements the text of **Śankha**, viz. " Land which had been formerly lost &c." **Kramādabhyāgatamiti** ( p. 79. l. 21. ). *in regular succession inherited* &c. (p. 190. l. 25). Here the expression 'in regular succession' is the very one in the text of **Śankha** and inherited is alone the word which is supplemental.

Intending to indicate that the portion in the original text 'without detriment to the paternal estate' is the supplement of all the kinds of property included in the text as not liable to partition such as 'a grant from a friend' and the like, the Author says **Atra Pitṛdravyāwirodheneti** (p. 79. l. 24.) *here the expression "without detriment to the paternal estate" &c.*, (p. 191 l. 3–4 ). This, moreover, is an extension[2] by implica-

---

1 पीठादिकं. 2 उपलक्षण implying something which has not been actually expressed; implication of something in addition or any similar object where only one is mentioned. स्वप्रतिपादकत्वे सति स्वेतरप्रतिपादकत्वं

tion. It should be understood that whatever has been stated even in other *Smṛtis* as impartible, of all these properties this is the supplement by implication.

By reason of the impartibility of properties predicated by the expession 'without detriment to the paternal estate', as by deduction gifts from friends and the like kinds of properties, when acquired with detriment to the paternal estate, become liable to partition, so by reason of not being included in friendly gifts and the like, property which is obtained as a gift, even though obtained without detriment to the paternal estate, is liable to partition; so the Author says: **Tathâ pitṛdrawyâvirodheneti** (p. 79. 1 28) *moreover without detriment to the paternal estate* &c. ( p. 191 l. 16-17).

If the expression 'without detriment to the paternal estate' were not regarded as a residual supplement of the friendly gifts and the like, then the following meaning would be deduced viz. 'whatever is obtained without detriment to the paternal estate, is not liable to a division. And by this exposition of the text the indivisibility generally even of the friendly gifts and the like having been established, a mention again of these viz. gifts from friends, nuptial presents &c. as impartible would he improper, so the Author says: **Asya cha Sarvaśeṣhatwâbhâva: iti** (p. 79 l. 30) *But if that were not understood with every member of the text &c* (p. 191 ll. 19-22 ).

It may be said, indeed, the text begins with gifts from friends and the like as showing that gains are not liable to a partition even though obtained at the detriment of the paternal estate. Anticipating this the Author says, **Atha pitṛdrawyâwirodheneti** (p. 79 l. 30) *It may be said (obtained) at the expense of the patrimony.* The Author refutes it as it would be opposed to the authority such as the usage of the good (*Śiṣhtas*) &c. **Tathâ Satîti** (p. 80 l. 1) *were it so &c* (p. 192. ll. )

Indeed, this is improper, as relatively usage is (of) weaker authority than a text. If it be said that even usage is (regarded as) authority as contemplating[1] a text, and not by itself, then even in this view also, text is authority. Even so, from as much of the *Smṛti settled by usage the* intended point is supported from so much of the *Smṛti* viz. such as 'gifts from a friend, nuptial gifts' and the like, the intended result being obtained, if it be argued, by reference to the rule as to dependent and

1 वचनं कल्पयन्नेव आचारोऽपि प्रमाणं. Mark this. The origin of usage is also under a supposed authority from some text.

independent sources, that usage alone is weaker, the answer is, not so. This state of things is inevitable–this of suppression. A weak is not suppressed simply because it is weak, but when there is opposition. And an opposition occurs where in regard to the same subject mutually contradictory statements are made. In such a case under the maxim 'when a construction is possible without opposition, an opposition is not proper', the interpretation of the text "gifts from friends, and nuptial gifts" according to the mode stated by us alone being without "contradiction to the usage of the good" an opposition by imagining any other meaning is improper. Thus it has been well said: **Samâchârawirodha iti** (p. 80 l. 8.) *inconsistent with well-established usage &c.* Thus every thing is unexceptionable.

Not only will it be inconsistent with well-established usage, but it would be opposed to the text of **Nārada** also in regard to wealth obtained as gains of science enumerated along with gifts from friends and others of that class; as the Author says **Vidyâlabdha iti** (l. 2). *in regard to gains of science &c.* (p. 182. l. 4.)

This is the meaning of the text of **Nârada:** While a brother is prosecuting his studies for knowledge, another brother of his supports the family, the supporter shall get a share in the wealth obtained from that knowledge, even though he be not learned. The purpose is that here on account of the support of the family having been mentioned as a reason for participation in the wealth, the participation of a share in the wealth gained by science is due to a special cause and not in due course in his capacity as a brother, and so the wealth known as the gains of science is not by itself liable to partition, and hence its impartibility.

By the text of **Kâtyâyana**, it is only gains of such science as was obtained with food and substance from others than the father and the rest, that is not liable to partition; in the case of wealth obtained as gains of science it may be said that there would be a contradiction to this text also, so the Author says: **Tathâ vidyâdhanasyeti** (p. 80. l. 3.) *Moreover, of wealth as being acquired by learning* &c. (p. 192. ll. 6-7.)

Of the text of **Kâtyâyana**, the following is the meaning in substance: That wealth which was obtained by means of the learning which was acquired without detriment to the paternal estate, is the wealth of this character and none else. Such kind alone is not liable to a partition. Gains of learning other than this, however, are verily not gains of learning and are certainly partible.

PAGE 51* If the expression 'without detriment to the paternal estate' be taken as not applicable also to others than gifts from friends &c. the Author mentions another fault: **Tathâ pitṛdrawyâvirodhenetyasya bhinnawâkyatwe iti** (p. 80. l. 5.) *Moreover, if the expression 'without detriment to the paternal estate' be taken as a separate clause &c.* (p. 192. ll. 10–12.) This is what is (intended to be) said: When the portion 'without detriment to the paternal estate' is (taken as) independent and not as a supplemental addition to gifts from friends and the like, then it being established that whatever is obtained without detriment to the paternal estate is not liable to partition, and only things being regarded as obtained as a gift which are obtained by the acts of donation and of acceptance only without any stipulation whatever gains obtained by donation having been obtained without detriment to the paternal estate, these also may be (regarded as) not liable to partition and in that case it would be contrary to the well-established usage.

**Manu** has made it clear that the clause 'without detriment to the paternal estate' is a supplement of the 'gifts from friends' and the like. So the Author says, **Etadeva Spashtikṛtamiti** (p. 80. l. 8) *This very thing has been made clear &c.* (p. 192. l. 13).

This is the meaning of the text of **Manu**: Without using the patrimony, what one acquires by labour, learning, what is obtained is *labdham* or wealth obtained. Or, without using the patrimony what one acquires by labour, what is obtained by learning acquired by using the patrimony—would be an order of words by a change of the case[1]. These two also one should not give to the co-heirs. And thus the meaning is that by the use of the patrimony, acquisition of wealth by learning or the like being connected through the acquirer as the adjective and the clause qualifying it, what has been obtained without detriment to the paternal estate as gains of learning or by labour, is not liable to partition. Moreover, this extension by implication is similarly so in the case of gifts from friends and the like, as the gains of learning enumerated along with it are regarded in that manner.

It may be said, indeed, in the property of the grandfather, as also of the father, the ownership of sons and the like is by birth itself, and not in the property obtained[2] from a brother, and therefore in the case of property obtained from a brother, a friend, or the like, what was acquired

---

1 i. e. from the nominative case into the instrumental.

2 This may also mean acquired by brothers. But the translation given fits in with the context.

ed by one is his property only, and thus in the case of such property there being no partition (at all), the prohibitive rule that gifts from a 'freind and the like are not liable to partition' is inappropriate. Anticipating this, the Author says **Nanu Pitṛdrawyâwirodhenetyâdinâ** (p. 80. l. 8.) *Indeed...without using the patrimony &c.* ( p. 172. l. 17. )

With a view to condemn the opinion of a certain writer the Author points out a liability to division according to his view : **Atra Kaschiditi** ( p. 80. l. 9. ) *Here, a certain writer &c.* ( p. 193. l. 2. ) The Author points out the text leading to a division: **Yatkinchit pitari preta iti** ( p. 80. l. 10. ) *Whatever...after the father's death &c.* (p. 193. ll. 3–4.) The Author points out how this text leads to a division : **Jyeṣhṭho wâ Kaniṣhṭho weti** (l. 11.) *if the eldest or youngest, or &c.* ( p. 193. l. 6. ) : This is the meaning: In the clause "property the eldest acquires", the word eldest does not particularise its own[1] meaning ; for the word eldest is indicative of the middlemost and the youngest also. Similarly in the clause "a share to the younger brother" the word younger, although expressive of the youngest, is also indicative of the eldest. So also the clause 'after the father's death' although indicative of a time subsequent to the father's death, is indicative of the subsequent as well as of the prior time. Thus this text being capable of meaning that by an extension of the word 'eldest' &c. whatever property the eldest, or any other obtains as a gift from a friend and the like, from that property, a share exists in favour of the youngest or the eldest while the father is living or dead, if they maintain learning i. e. are learned, by this (interpretation) of the text "whatever...after the death of the father" even gifts from friends and the like being liable for a division that has been prohibited by the **Yogîswara** by the text "without detriment to the paternal estate &c."

It may be said that the text "without detriment to the paternal estate" is only an explanatory repetition of the non-liability for a partition of the gifts from friends and the like as established by long-continued usage, and not as a prohibition[2] which contemplates its previous existence, so the Author refutes by **Tadasat** (l. 13). *that is erroneous* &c (p. 193 l. 11.)

---

1 अविवक्षितस्वार्थः The स्वार्थ of ज्येष्ठ is eldest. The meaning is, the word ज्येष्ठ is only indicative of other sons also.

2 अनुवाद and प्रतिबंध. See notes in the Mitâksharâ सिद्धस्यानुवाद: An अनुवाद is only a repetition by way of explanation of what has been established.

Or even granting that it is a prohibition, still that is because of another text, not by what you say, so the Author says **Athawâ Samawetaistuiti** (p. 80 l. 14) *or by them in concert &c.* (p. 193 l. 18.)

The Author points out the proper interpretation of the text "whatever.—after the father's death &c" : **Ato maitrâdiwachanairiti** (p. 80. l. 16). *Therefore—from texts concerning gifts from friends &c.* (p. 193 l. l. 20 22). The meaning is that under the text of the **Yogiśwara** such as 'without detriment to the paternal estate' and the like the non-liability of 'the gifts from friends' and the like whether before or after the father's death being established, under the position that the text "whatever-after the father's death from the property acquired by the eldest son after the father's death, such as gifts from friends and the like, the younger sons if learned will get" stands refuted.

PAGE 52.

The Author expounds the text of **Manu**[1] viz. 'clothes, vehicles, ornaments &c'. **Dhṛtânâmeva wastrâṇâmityâdinâ** ( p. 80 l. 19 ). beginning with *only to clothes which are worn &c.* (p. 194. l. l. 3-4). **Vaiṣhamyenâwibhâjyatwe jyeṣthasyeti** (l. 23) *If there cannot be a division on acccount of the unevenness of the number they belong to the eldest &c* (p. 194 ll. 16-18). Here the clause about unevenness refers to the commensurate character of the share and not to its unevenness. And this is proper. Three horses and three sons make the share commensurate, and these may be completely divided. With four horses and sons three or five, owing to the incommensurate nature of the horses it being impossible for the shares to be distributed in conformity to their extent[2], and a division by (a) money (value) being prohibited, and a rule being laid down for being given to the eldest alone after dividing the horses &c. such as are commensurate with the shares, the balance remaining on account of the incommensurateness, whether of horses or the like other things, should be given to the eldest alone. In this chapter, the unevenness is be to understood in this manner only.

**Yaḥ Strîbhiralankâro dhṛto bhavet** ( p. 80 l. 27) *such ornaments as are worn by women &c.* (p. 194 l. 23). Here the expression 'by women' is only indicative. Therefore, the general reference by 'that which was worn by each person' is not opposed. And thus in the expression 'during the life-time of their husband" the word husband means 'master" i. e. the father, or the like.

---

1 Ch. IX. 219.

2 स्वरूपेण i. e. in the intrinsic extent of the shares themselves.

The Author points out a text of **Gautama** laying down the indivisibility of the women under the protection of the father such as the *Swairiṇis* and the like, although even (in number): **Strîshu cha samyuktāswiti** (p. 80. l. 32). *also of women connected* i. e. consummated i. e. to say the women under protection &c. (p. 195. l. 7). With the text 'without detriment to the paternal estate' whatever else is acquired by man, the **Yogîśwâra** began the nonliability for a partition and that when expounded in one place by the method of affirmative and negative reasoning becomes easily understood, and so the Author mentioning that which will[1] be stated later, reminds of what has been stated already: **Pitṛprasâdalabdhasyâwibhâjyatwam wakṣhyata ityādinā** (p. 81. l. 9.) *what is obtained through* the *father's favour will be subsequently declared &c.* (p. 196 ll. 78). The affirmative way is the exposition of the nature of property not liable to partition; the refutation of impartibility is the negation.

**Yena Chaiṣhâmiti** (p. 88. l. 11.) *if* (any one) *among them &c.* (p. 196. l. 14.)

---

## Yâjñavalkya Verse 120.

**Anekapitṛkâṇâmiti** (p. 811. l. 17) *by different fathers &c.* (p. 196. l. 29). Of different fathers *i. e.* of several fathers, i. e. to say of brothers' sons. **Pramītapitṛkâṇâmitī** is also another reading.

**Na swarūpāpekṣhayeti** (p. 81. l. 19) *not with reference to themselves &c.* (p. 197. l. 4). *i. e.* not in their capacity as son's sons. **Keṣhu Chitputreṣhu dhriyamâṇeṣhu iti** (p. 81. l. 22.) *if some of the sons be living &c.* (p. 187. l. 10). 'Living' i. e. in existence, that is to say, in life. (vide the rule of grammer under which) the root *dhru* means 'to continue.'

It may be said, that by the text " among claimants by different fathers, the allotment of shares shall be by regard to the fathers"[2] the following result has been accomplished: The grandson's obtaining the property of the grand-father, is through the father. There also only if the father had died unseparated. In such a case when the father is living and is also separated from his own father, or being the only son and not having any brother has remained unseparated from his father, then,

---

1 Yajn. II. 123.

2 For द्रव्याप्राप्तिः read द्रव्यप्राप्तिः The word प्राप्ति has the peculiar significance of reaching or arising. Here it means connection.

in the first case, on account of his being separated from his father, the father[1] does not get the grand-father's wealth; and he being[2] alive, the grand-son does not obtain the grandfather's wealth, as the door[3] is blocked. In the second case, although by reason of his being unseperated the father obtains the property, stiill by the very fact of the father being alive the grandson does not obtain the grandfather's wealth. Therefore in the property of the grandfather the grandson whose father is living does not get a share. Or even granting that he has a share, ownership being from the very birth, still even if the father be dead the share having been laid down as through[4] the father only, much more would it be so when he is living and thus it being settled that the father is the principal, a share can be obtained only with the father's pleasure.

Even there by reason of the text[5] ' Two shares let the father keep for himself when making a partition ' the father would have two shares. With a view to introduce the next verse the Author states this objection by anticipation: **Adhunâ wibhakte pitarītyâdinâ** (p. 81. l. 25 ). *Now the father being separate &c.* (p. 117. l. 15).

---

## Yâjñavalkya Verse 121.

Here the expression 'of the grandson' is indicative of two or more grandsons. **Nibandha ekasya parṇabhârakasyeti** (p. 81. l. 26) *corrody i. e. from each bundle of leaves &c.* (p. 117. l. 27). From one garden[6] of leaves so many leaves. Similarly from an orchard of betel trees, so many betel leaves, as expert dealers in these know for that which is definitely fixed, e. g. by the number of leaves or the like is a corrody *i. e.* a bundle of leaves. It is derived from the root भृञ् to fill with the वुन् termination ending.

---

1 Here the statement in the Subodhini is rather not lucid as usual. The matter has been put clearly in Bâlambhaṭṭi thus: तदा विभक्तत्वादेव पैतामहद्रव्यप्राप्तत्वात् स्वपितुर्विभक्तत्वात् तस्य सत्वाच्च द्वारनिरोधेन पौत्रस्य पैतामहद्रव्यप्राप्त्यभावः (see Bālambhaṭṭi p. 151. ll. 13-14. )

2 Another reading is अभ्रियमाणत्वात्, which does not suit; see also Bālambhaṭṭi in the last note.

3 V. L. द्वारस्य; this is a better reading and has therefore been adopted in the translation. उद्धारस्य if adopted would mean the share from the grand-father's property.

4 For पितृद्वारावांऽशविधानात् read पितृद्वारैवांशविधानात्.

5 Nārada. Ch. XIII. 12.

6 There is a mistake in the print; read वाटिका for वाटिका।

PAGE 53 **pratigrahavijayâdinâ labdhamiti** (p. 82. l. 2.) *such as was acquired—through acceptance of gifts, or by conquest &c.* (p. 198. ll. 134). By the word *Ādi*, &c. are included, merchandise, service of the twice-born, and the like.

Since thus the ownership of the father and the son is equal in the popular view, there the rule that 'Among claimants by different fathers the allotment of shares shall be by regard to the fathers' is determined by the texts after the father's death, and not while he is living ; so the Author says : **Ataścha pitṛto bhâgakalpaneti** (p. 82. l. 4). *the allotment of shares shall be by regard to the fathers &c.* (p. 198. l. 10).

The Author removes a (seeming) contradiction with another text **Vibhâgaṃ chetyâdinâ** (l. 5) *when the...a partition &c.* (p. 198. l. 13).

The Author states another peculiarity in regard to the grand-father's property (as distinguished) from the father's acquisitions: **Tathâ cha Sarajaskâyâmityâdinā** (p. 82. l. 8). *thus, while the mother is capable of bearing &c.* (p. 195. l. 19).

It has been stated that the son has the right to object to an alienation by the father of the grandfather's property, but not in the father's ; the Author explains that, introduced by a propor reason **Tathāhityādinâ** (l. 10). *consequently &c.* (p. 198 l. 26). **Pitâmahārjitaṃ Akāmopi iti** (p. 82 l. 16). *however reluctant...the effects acquirvd by the paternal grand-father* (p. 199 ll. 12 14). The meaning is, the property acquired by the paternal grandfather with the exception of that which has been stated before.

---

## Yâjñavalkya Verse 122.

**Mātṛbhāganchâsatyâm duhitarīti** ( p. 82. l. 22. ) *the mother's portion, however, only if there be no daughter &c.* ( p. 199. l. 18. ) Here the word *cha*[1] is used in the sense of *tu*. The meaning is that when the daughters are living, he shall not get the mother's portion.

**Asawarṇāyāmutpannāstu swāmśameveti** ( p. 82. l. 23. ) *but sons by women of different tribes, receive merely their own proper shares* &c. ( p. 199. ll. 22-25. ) A son of a *Brāhmaṇa* from a *Kṣahtriya* wife,

---

1 '*Cha*' is ordinarily used as a copulative conjunction meaning and. Some times it has a disjunctive significance and then it functions as *Tu*-however.

a share[1] less than a quarter, one born from a *Vaiśyâ* wife half a share and that born from a *Śûdrâ* wife one-fourth of a share. In the same manner, one born from a *Kṣhatriya* of a *kṣhatriyâ* woman receives three shares, one born of a *Vaiśyâ* woman a half, and one born of a *Śûdrâ* woman one-fourth. One born from a Vaiśya, of a *Vaisyâ* woman two shares, and one born of a *Śûdrâ* woman a fourth. And this very rule he will state further on in the text 'Four, three, two shares &c."

**Mâtṛkan tu sarwameveti** (p. 82. l. 23.) *as for the mother's property, the whole of it* &c.(p. 199. l. 22.) Here also subject to the rule 'if there be no daughters' as under the text "of the mother's (property) the daughters (shall take) the residue" is meant the residue of the entire property of the mother.

A son born of a woman of the same *Varṇa* after separation, is entitled after the death of the parents to get their property. The Author cites the text of **Manu** in support of this: **Etadeva Manunoktamiti** (p. 82. l. 23.) *The same rule is propounded by* **Manu** ( p. 124. l. 1. ).

The Author expounds the term 'parental' after treating it as an Uni-residual[2] compound: **Pitroridamiti** ( p. 82. l. 94. ) *appertaining to both father and mother.* ( p. 200 l. 3.)

It may be said, indeed, whether it is treated as an *Ekaśesha* or not, it is to be understood as parental, then what is the motive in making it *Ekaśehsha ?* So the Author says **Anîśah pûrwaja iti** (p. 62 l. 25) *a son born before.... has no claim* &c. (p. 100 l. 4). The meaning is that because here the reference is in a dual number as 'of the parents'.

The Author explains the text 'a son born before has no claim on the wealth of his parents :' **Mātāpitroriti** (l. 25) *to his father and mother &c.* (p. 200 l. 8) **Sanṣrṣhtastena weti** (p. 81. l. 11) *or if they are any who are re-united with him* (p. 200 ll. 17-18)

---

## Yâjñâvalkya Verse 122 (2).

The Author states the meaning of the word 'allotment' in the text 'or his allotment must be made out of the visible estate': **Tasya pitari preta iti** (p. 83. l. 3) *subsequently to the death of the faher &c.*

---

1 There appears to be some confusion likely to be created by the use of the words अंश and पाद्—'Share' and 'quarter'. According to the rule stated in Yajnavalkya II. 125. sons born of women of the descending order by Brâhmaṇi Kṣhatriyâ; Vaīshyâ, asd Sûdrâ take in the ratio of 4: 3: 2: 1.

2 A species of *Dwandwa* compound in which one only of two or more words (एकशेष) is retained.

(p. 200 or ll. 16–17). The order of words in this portion should be, of him, who was born after the partition. After the partition, profits which are made by means of each share in agriculture and the like are 'the income': and 'expenditure' is that by which the payment of debts incurred by the father[1] and the maintenance of the family is made. Including the income as part of the share, and deducting the expenditure and making a deduction from all the shares, as much as from each particular share as may be proper, the determination of the share should be made.

The Author mentions a rule in regard to a son who having been conceived just at the time of the death of the father, whose conception was not known even at the time of the partition and who was born of that very fœtus: **Etadevoktam bhawatītyādinā** (p. 83. l. 6) beginning with *the meaning here expressed is this &c.* (p. 201. l. 8). Although distributed, that paternal estate, was as if not distributed, since the child in the womb, from the simple fact of its being a child, was entiled to a share in the paternal estate, therefore even from the profits arising from the parental estate, that child is entitled to a share. This is the meaning. There also it should be understood from what will be stated hereafter that in the case of a son the right exists for an equal share, and in the case of a daughter, for a quarter of a share appropriate to one of her kind.

Here the word[2] (*wā*–) 'only' in the original text is used in a restrictive sense, meaning thereby that his allotment must be made only from the visible residue ascertained after correcting the income for the expenditure. The Author takes as understood the text of

*Page 54.

**Vaśishṭha**: 'Now,...among brethren &c.' and expounds it: **Gṛhītagarbhāṇâmiti** (p. 83. l. 11). *who are pregnant &c.* (p. 201. l. 22).

**Vibhaktajaḥ pitryam mātṛkaṃ cheti** (p. 83 l. 13). *a son born after partition...his father's goods as well as of his mother &c.* (p. 202, ll. 1–2). After partition and while the mother and the father are still living and a son who is born, one like him is 'a son born after partition.' The meaning here in the text "when the sons &c. have been separated, a son who is born" is that after the death of the parents,[3] the mother takes the father's property.

1 The word is पितृ which may also mean male ancestors. Here it will mean only such male ancestors whose debts were binding.

2 See note on p. 200 of the Mitāksharā.

3 The original is पित्रोः. Apparently the use is loose, for obviously after the death of both the parents, there could not be a mother who would take. It should have been पितुरूर्ध्वं.

## Yâjñavalkya Verse 123.

The Author extends the rule, already stated, to other circumstances also: **Tathā asatī wibhaktaja iti** (p. 83 l. 18) *so when there is no son born after partiton &c.* (p. 202 l. 15) This is the meaning : Not only is the rule that even before partition the wealth which had been given by the parents to one belongs to him when a son is born after partition, but even when no son is born after partition, whatever had been given by the separated parents to their sons and the like, that property must be regarded as the share of him to whom it was given, by those partitioning after the death of the father their property.

---

## Yâjñavalkaya Verse 124.

There being a difference of opinion among the commentators on the text "And the sisters also...of his own share", and the meaning also being subtle, and intending to indicate that the interpretation which is about to be given by him is the only correct one and none other, the Author proceeds **Asyârtha iti** (p. 83 l. 29) *The meaning of the above passage* &c. (p. 204 l. 1).

Taking up here the text before stated viz 'the uninitiated however should be initiated' the Author expounds it **Bhaginyaschā-sanskṛtā** (p. 83 l. 29) *and sisters also who are not married &c.* (p. 64 l.2).

Some explain thus the clause 'and sisters also....of his own share'. It is like this: making as many shares as (there may be) brothers, from the share of each, a fourth part should be given to the sister. So, when there are two sisters, or even many, to each separately must be given a fourth from each share.

Others, however, explain that after taking out a fourth portion from each share it should be given to the sister. When there are two sisters or many, then also the two or many even should take only the share taken out, and not a separate deduction.

Both these are not proper. For, according to the first, when there is one brother and sisters seven or eight, then by giving a fourth share to each sister, the brother would become utterly destitute; if, one sister and many brothers, then by the brothers giving each a fourth of a share, the sister would be getting a portion greater than a brother and in that case there would be a contradiction of the text prescribing a smaller share to a daughter than that of a son.

While according to the second view, the same fault as aforesaid would come about when there is one sister and many brothers. If there be, however, one brother and sisters seven or eight, the brother's share being one, its fourth part would be small, and a division of that into fractions would be an extremely negligible share and thus this cannot be contemplated by the text "by giving a fourth from each share".

Let if be so, still[1] there would be a contradiction to this text, while according to the manner which is being stated by us, even when a fourth share is established for each of the sisters, there would be no contradiction with the word *(Turīyaka)* fourth, while according to your view, there being an absence of that, it would be contradicted. In this way intending to refute the view of one side, the Author states his own view: **Tatra nijādamśādityādinā śesham brāhmaṇīputrau vibhajya gṛhṇṇītetyantena** ( p. 84. ll. 1-12. ) beginning with *from his own share* ( p. 204. l. 7. ) and ending with *the two sons of a Brâhmaṇi wife shall equally divide and take* ( l. 38. )

**Evaṃ jātiwaiṣhamye bhrātṛṇām bhaginīnāṃ chetyâdi** ( p. 84,) *Thus—of brothers and sisters of different castes &c* (p. 205. l. 2). Thus when they are of differnt castes and the number of brothers and sisters is equal, the following rule should be observed: A son of a *Brâhmaṇī* wife and also a daughter, one son of a *kshatriyā* wife and also a daughter, and similarly of a *Vaiśyâ* as also of a *śûdrā* wife, in this way are eight children, four children being females and four males. Under the text 'Four, three, two and one' the shares of the children of the *Brâhmaṇī* are eight, of the dhildren of the *Kshatriyā* six, of the children of the *Vaisyâ* four, and of the children of the *Śûdrâ* two, thus making twenty shares. To the *Brâhmaṇī's* daughter from the share prescribed for her caste viz. four shares, a fourth from that her own share should be given, to the *Kshtriyâ's* daughter, from the share prescribed for her caste viz. three shares, a fourth part should be given; to the *Vaisyâ's* daughter

PAGE 55

from the share prescribed for her caste viz. two shares, a fourth part should be given; and to a *Śûdrâ's* daughter from the share prescribed for her caste viz. one share only, a fourth portion from that own share having been given, the residue of the property remaining from each share should be pooled together, and the sons from the *Brâhmaṇī*[2] and the rest should divide in the ratio of four,

---

1 V. L. भवतु वा तथापि तद्वचविरोधः !

2 The expression used here i. e. ब्राह्मणादिपुत्राः is not quite accurate although in the particular case i. e. of a son of a Brāhmani wife it may be correct; it should have been ब्राह्मण्यादीनां पुत्राः

three, two, and one and take. When, however, the number of the brothers and sisters is uneven, as many individuals as there may be of brothers &c. so many shares be imagined in the ratio of four, three, two and one, to the daughters should be given a fourth portion from each of the shares prescribed for the caste of each, and the balance of the property should be divided in the ratio of four, three, two and one, and then the brothers should take it. Thus should it be applied.

**Saṇskāramātropayogidrawyamiti** (p. 84 l. 16). *Money sufficient for her Saṇskâra* (p. 203 l. 4). *Sanskâra* i. e. marriage. The Author expounds the text of **Manu** viz. out of their own allotments in the manner stated by him, **Asyârtha ityādinā** (p. 84 l. 18). *the sense of this passage* &c. (p. 205l. 9.). The Author refutes the exposition of one view even in the explanation of the text of **Manu. Na chātrātmiyabhāgāditi** (p. 84 l. 20). *and not from one's own share &c.*

Here also when they belong (p. 205 ll. 511) to different castes and there is unevenness in the number of brothers and sisters, the same rule holds as stated before ; so the Author says **Jātiwaishamye sankhyâwāiṣhamye cheti** (p. 84 l. 22). *when the castes are dissimilar, as also when the number is uneven &c* (p. 205 ll. 16 17).

It may be said that in the case of daughters, there is only an affectionate gift, and not a necessary obligation, so the Author says **Patitāḥ syuraditsava ityakaraṇa iti** (p. 84 l. 22) *those who refuse to give shall become degraded, thus refused &c.* (p. 205 l. 21).

Having expounded the text of **Manu** the Author states an objection : **Atrāpi chaturbhāgawachanamiti** (p. 84 l. 24). *Here also the mention of a quarter &c* (p. 205 l. 23). The Author gives a reply : **Na Smṛtidwayepīti** (p. 84 l. 24). *no...in both the Smṛtis &c.* (p. 205 l. 28). 'In both the *Smṛtis*' i. e. the *Smṛti* of **Yâjñavalkya** and also in the *Smṛti* of Manu.

**Aṇsadānawiwakṣhāyām bahubhrātṛkāyām** (p. 84 l. 26). *in the allotment of a portion to a sister having many brothers &c.* (p. 205 ll. 30-32.) *The meaning* is in the discussion about the giving of the fourth portion stated in the text 'by giving them a fourth part' and also in 'a fourth part from the share of each.'

---

## Yâjñavalkya Verse 125.

**Sankhyaikawachanātcha wipsāyāmiti** (p. 85 l. 5.) *words denoting units of a coin in the singular number, when a distributive sense is to be*

*expressed &c.* (h. 207 l. 11). Of this aphorism of **Paṇini** this is the meaning: Of words denoting units, and in the singular number, and when a distribution is to be expressed the termination shall be *Śas*. An example of units is 'he gives two and two'; or 'he gives in two'. The Author points out the application to the present context by an illustration for the singular[1] number **Adhikaraṇakārakāditi**[2] (p. 86 l. 5.) *and in a locative case &c* i. e. from the locative singular.

**Tatputrâṇâm pūrwokta eva wibhâga iti** (p. 85 ll. 12.13). *partition among his sons takes place in the same manner as has been mentioned before &c* (p. 208 ll. 3 4). His sons i. e. of the *Śūdra* begotten on a *Śûdrâ* wife, these are 'his sons'. Of these the partition as stated before' i. e. by the text[3] "If the father makes a partition" and the text[4] 'the sons should divide after the partition.'

Morever, for this reason also let the sons of a *Kshatriyā* and others have a share in land acquired by purchase and the like ( method ), so the Author says **Pratigrahaṇâditi** ( p 82 l. 16. ) *since acceptance of donation &c.* ( p. 208 l. 11 ).

By the force of the sense included in the expression *(pratigraha )* 'acceptance by donation', in land obtained by purchase &c. the sons of the *Kṣhatriyâ* and others have certainly a share ; so the Author says: **Śūdrâputrasyeti** ( p. 83. l. 15.). *For the son by a* **śūdrâ** *woman &c.* ( p. 48. ll. 13. 14. ). **Śūdryâṃ dwijâtibhirjâta iti** ( p. 85. l. 17. ) *the son of a* **twice-born** *borne on a śudrā woman &c.* (p. 2 08 l. 19.). Here, by the expression 'an a Śūdrā woman' is meant not 'the wife of a Sūdra' but that on one's own wife, a *Śûdrâ*'. (For, a son borne on her as 'the wife of a *Sudra*) being another than either a *Kuṇḍa* or a *Golaka*, he would not be entitled to a share. Therefore the expression 'on a *Śudrâ woman*, is poetic[5].

It may be said, indeed, let there be a special prohibition for a share in land to a son by a *śudrâ*. But how, in that way, could the sons by the *kṣhatriyâ* and others get a right for land obtained by purchase and the like ? Anticipating this, the Author says **Yadi krayâdiprâptā bhūriti** (p. 85 l. 17) *if land acquired by purchase and similar means &c.* (p. 208 l. 16). The meaning is that the prohibition being

---

1 See Bālambhatti on this part. It adds भाषत इत्यकेवचनोदाहरणम्.
2 See note 1 on p. 207 Mitāksharā.
3 Yājnavalkya II. 44.
4 Yājn. II. 117. 1
5 i. e. a poetic licence.

only of the son by a *Śudrâ* under the rule of taking[1] by the horn it is probable that a share exists for the sons of the *kṣhatriyā &c*.

It may again be said, this is indeed very small, that a son by a *śûdrā* woman has no share in the land, since under another text, any share has been prohibited for him; so the Author refutes it; **Yatpunar-brāhmaṇakshatriyaviśāmityâdinâ** (p. 83 l. 18) *As for the text, a son of a Brāhmaṇa, Kṣhatriya, or Vaiśya &c.* (p. 208 l. 19). The meaning is that when by the father, while living, anything has been given to a son of a *śûdrā*, then the son of the *śûdrā* does not get a share.

---

## Yâjñavalkya Verse 126.

PAGE 56* **Uddhârawibhâgo nishiddha iti** (p. 85 ll. 25. 26) *a partition with deductions has been forbidden &c* (p. 209 ll. 12–13). The meaning is that a distribution of shares under the text[2] "and the eldest with the best share" has been prohibited.

Some interpret this text viz; "withheld by one co-heir from another" as indicating that even if common property which is liable for distribution has been withheld, there is no fault on their part. That is wrong; and so the Author says, **Evam cha wachanasyârthawatwāditi** (p. 83 l. 28) *thus since the text is thus significant &c.* (p. 209 l. 15). This is the import: According to the mode stated before, by the statement of the rule itself regarding the distribution of equal shares the text has been (seen to be) with a purpose, it should not be imagined to be with the purpose of indicating an absence of a fault not mentioned, therefore it is a fault[3] to withhold even common property.

It may be said, well let there be a fault, but that is only in the case of the eldest, not (so) with the younger ones, as **Manu** has so declared. Anticipating this, the Author says **Nanu Manunâ jyeshtha-syaiweti** (p.85 l.29). *But* **Manu**...*only in the eldest &c.* (p.209 l.17). 'shall defraud' i. e. 'shall cheat'. That is to say he should not deceive them.

**Dandâpūpikanītyeti**[4] (p. 86 l. ) Under the rule in the maxim of the 'loaves and the staff'. A collection of loaves is 'a multitude of loaves'.

---

1 शृंगग्राहिकान्याय. Lit. 'taking by the horns' i. e. in a direct manner; directly without any intervening agent; see note above p.

2 Yājn. II. 114.

3 There is a mistake in the print; for दोषो नास्तीति read दोषोऽस्तीति.

4 See note 2 on p. 209. Mitâksharā.

'Under the rule (of grammar[1]) the affix ठक् 'comes in the sense of collection thereof, after the names of things without consciousness, and after 'hasti' and 'dhenu'. So also **Amara**[2] "Āpûpikaṁ Sāṣhkulikaṁ, and thus like in case of inanimate things." Where a multitude of (cakes) loaves has been hung or tied to a stick, if such a stick is taken away by thieves, then it follows that much more has the multitude of loaves also been taken away. Similarly in the case under consideration when a fault has been pointed out for withholding common property in the case of the eldest who is independent, and who is in the place of the father, then much more must it be so in the case of others also. This is not only according to rules of equity, but under a text[3] also the fault has been indicated : **Tathâ châviseṣhenetyâdinâ** (p.86 l.2) *and moreover ... without exception &c.* (. 209 l. 29).

It may be said, that in the case of common property, one also has a proprietary interest, and in the process of deprivation also what is taken is certainly property which is one's own; thus no blame attaches to the withholder. Anticipating this, the Author says : **Atha sâdhāraṇamdrawyamiti** ( p. 86 l. 6 ) *that the common property &c.* (p. 210 l. 8.) As in the common property one has a proprietary interest, so other sharers also have a proprietary interest, and so in the process of deprivation he will certainly stand to have taken away another's property, and following the rule of prohibition viz "one must not take (which is) another's property" a blame certainly exists, thus the Author refutes: **Tadasadityâdinâ** (p. 86 l. 7) commencing with *that is wrong &c* (p. 210 l. 9).

With a view to emphasise this very meaning the Author illustrates a rule from the Sixth chapter. **Yathâ maudge charau wipanna ityādinā** (p. 86 l. 8) *if an oblation of green kidney beans be not procurable &c* (p. 210l. 14). This is the Sixth *Adhikaraṇa* in the Third Part of the Sixth Chapter: "And a forbidden material generally, because there is a Vedic text about it." It is laid down in the *Śruti* that the black barley, grams,[4] and the *kodrava*[5] grain are not acceptable for a sacrifice. There

1 Panini IV. 2. 47. ठक् means a termination with a क्ं ending. e. g. आपूपिकम्- अपूपानां समूहः similarly हास्तिकम्, धेनुकम्, शाष्कुलिकम् &c.

2 III. 2-40. Here in the verses following are given forms of nouns indicating collections of things, आपूपिकम् is a multitude of loaves, &c.

3 There is a mistake here in the print. On p. 50. in l. 12 after दोष, add : तदा सुतरामन्येषामपीति । न केवलं न्यायतः किन्तु वाचनिकोऽपि दोषः ( श्रूयते इत्यादि ).

4 i. e. of Gautama. 5 Jaimini VI. 3. 20.

6 वरकाः is another reading e. g. in Sâbarabhâṣhya. It means a small bean.

a doubt arises: The command is that 'an oblation of green kidney beans should be offered.' Here when the green kidney beans are not available, should the black kidney bean be accepted as a substitute or not ? According to the objector, as the *nīwâra* grain is accepted when paddy is not available, so when green beans are not available the black beans should be substituted. Indeed if it be said that under the text 'the black beans are not fit for a sacrifice' there being a prohibition, the black beans should not be accepted as a substitute, that is not so. There the prohibition is against the black beans as such in that form and not as crushed[1] parts of the black beans in which form they were available in substitution for the (crushed) part of the green kidney bean which were accepted as not being prohibited. Therefore the black beans should be taken as substitutes. The *Siddhântin,* however, holds, that the black bean is entirely excluded as a means at a sacrifice on account of the *Śruti* text "the black beans are not fit for a scrifice" which is of a general nature. Therefore even the part of the black bean which are inseparable[2] from them must be avoided. Therefore the black bean must not be accepted.

The application in the text is as followns: By putting forth the objector's position in the Adhikaraṇa the Author brings out the application of the text as follows; **Yathâ maudge charāviti** (p. 861. 6) *as if an oblation of green kidney bean &c* (p. 280 l. 4). This is the meaning: when an oblation of the green kidney bean is destroyed, and in the absence of the green bean the black beans are taken on account of their resemblance with the green bean, the prohibitive rule contained in the text "the black beans are not fit for a sacrifice" has no scope ; there is no prohibition, since part of the green bean are in the black bean, and the black bean are taken as a portion of green bean and not in their own form.

The Author takes up the conclusion and points out: **Mundgāwayaweṣhu gṛhyamāṇeṣhvawarjanīyatayeti** (p. 86 l. 20) *since they were used by mistake for ground particles of green kidney beans &c.* (p.210 ll.1718). This is the meaning : By the text 'black kidney beans are not fit to be used in sacrifices' the black kidney bean has been generally prohibited. Therefore even when the black beans are taken by mistake for ground particles of the green kidney beans, ground particles of the black bean even are accepted by mistake as not prohibited, and thus the

---

1 The crushed beans of either sort not being at once distinguishable, the one is taken for the other.

2 नांतरियक invariably connected, inseparable. नांतरयीकं is तद्भावे तद्भावरूपा व्याप्ति:

prohibitive rule has a scope, and thus pointing out in substance the application of the rule even the instance taken as an illustra- *PAGE 57. tion, the Author concludes by refuting the opinion of the other side : **tasmâdwachanata iti** (p. 81 l. 11.) *Therefore from the letter &c* (p. 210 l. 22)

---

## Yâjñavalkya Verse 127.

With a view to point out a counter-illustration of the text "by one who has no male issue...on the soil of another", as also of '*both even he &c.*, the Author states the meaning in substance: **Ityasyârtha ityâdinâ** (p. 86. l. 19.) *The meaning of this is as follows* &c. (p. 211. l. 13). The word *iti* is used in the sense of *evam* ( in this way ) and has the meaning presently to be mentioned. The Author now states that counter-illustration: **Yadâ tu niyukta iti.** *When, however, the person appointed &c.* (p. 211. l. 19. )

The Author cites a text of **Manu** in support of the interpretation **Yathoktam Manunâ Kriyâbhyupagamâditi** (p. 86. ll. 22.) *As has been declared by* **Manu** *: where by a special compact &c.* (p. 211. ll. 24-25.) The Author expounds the text of **Manu** cited before : **Atrotpannam ityâdinâ** (p. 86. l. 24.) *Let the child which will be here produced &c.* (p. 24. ll. 29-30). When there is no contract that 'the child which will be produced here will be of us two' then the child belongs to the owner of the field alone, and that child is not of both. The Author confirms this by a text of **Manu : Tathâ phalantuanabhisandhâyeti** (p. 86. l. 26.) *So, if there be no special agreement with respect to the crop &c.* (p. 211. l. 3226).

When without any compact between the owners of the field and of the soil with respect to the crop, as also when a child is begotten on another's field—thus this goes with what has been stated before—that produce in the form of a child is of the owner of the field alone.

Here the plural is used as no other illustration was intended to be stated. **Bîjinâm Kṣhetriṇâm iti** (p. 86. l. 26.) *Of the owners of the seed, as also of the owners of the field &c.* (p. 212. l. 1.) There the reason is : **Bîjâdyonirbalîyasîti** (p. 86. l. 27). *The receptacle is more important than the seed.* (p. 212. l. 27.) The meaning is that the actual is seen by the visible. Thus is the application of the verse. The particular meaning has indeed been made clear in the commentary.

**Itarasya niyogasyeti** (p. 87. l. 1.) *for any other such appointment &c.* (p. 212. l. 16.) i. e. the appointment with regard to a married woman.

It may be said, by the text of **Manu** viz. "From a brother-in-law or from a *Sapiṇḍa,* by a woman who has been duly authorised," &c. a rule has been laid down in regard to the appointment for a widow, and by the text 'By regenerate men, no widow must be authorized to conceive by any other' such an appointment has been prohibited, like the rule in the maxim regarding the use or nonuse of the *Ṣhodaśi*[1], there is a rule of option regarding the appointment owing to the affirmative and the negative rules. Anticipating this, the Author refutes it: **na cha vihita-pratiṣhiddhatwâditi** (p. 81 l. 11) *nor is an option to be inferred from the conflict of precept and prohibition* &c. (p. 213 l. 1) An option[2] is indeed of those which are equal. Here under the text "any one who authorizes her to conceive by another, violates the primeval law" there being a censure of the persons making an appointment, and in the prohibitive rule that being absent, there is no equality in the rules of precept and prohibition, and therefore no option.

As for the discussion as to whether the *Ṣhodaśi* should be used or not used, both being equally censured, there would be an option as to its use or non-use ; with this object the Author says **Niyoktṛṇâṃ**

---

1 This is stated in the third Adhikaraṇa of the 8th Pāda of the 10th Chapter of the पूर्वमीमांसा described by Śabaraswâmin as नातिरात्रे गृह्णाति षोडशिनमित्यादि निषेधस्य विकल्परूपाधिकरणम्। In the *first adhikaraṇa* the word न (*na*) is used as indicative of *Paryudâsa* i. e. an exception, while in the *second* it is used as *Arthawâda.* The *first adhikaraṇa* has been described as प्रदेशानारम्यविधानयोर्निषेधस्य पर्युदासताधिकरणम् and the *second* as न तौ पशू करोतीत्यादिनिषेधस्यार्थवादाधिकरणम्. And this third *adhikaraṇa* treats of the *Vikalpa* or the rule of option. It is based on Jaimini X-8-6. शिष्ट्वा तु प्रतिषेधः स्यात् "On the other hand after having laid down, there is prohibition" See the Bhâṣhya of Śabara, and जैमिनियन्यायमाला-विस्तार p. 602. Its substance is like this : In connection with a Jyotiṣhṭoma it is laid down. अतिरात्रे षोडशिनं गृह्णाति, नातिरात्रे षोडशिनं गृह्णाति. He takes the *ṣhodaśi* cup in an *atirâtra,* he does not take the *ṣhodaśi* in an *atirâtra.* Here you cannot say that the prohibition is in the nature of a पर्युदास or of an अर्थवाद either. So the prohibition in the present case where two contradictory texts exist side by side, is by way of option. (See Mitākṣharā pp. 35 & 213 and notes). The conflict between the two vidhis necessitating an option must be clear and patent. It must be (1) directly between two vidhis which are of a co-ordinate character and (2) the positive vidhi must be one addressed to the senses such as is the case in the example as to षोडशी given above. Here there being a direct and clear conflict, the one or the other text can be followed at option. Note further that the option is only when the contradiction cannot possibly be explained away, because option means ignoring both the texts and therefore it cannot be legitimate excepting as a last resort.

2 See note above and on p. 213 of the Mitākṣharā.

**nindâśravanâditi** (p. 87 l. 11) *Those who authorise the practice of appointment, are expressly censured &c.* (p. 213 ll. 2 3).

It may be said, indeed, by the text "the brother of the husband may take her according to the following rule", being in the nature of an affirmative pecept for marriage, she becomes the wife, and the husband's brother himself is the husband, and thus the relationship of a couple having arisen, a son born therefrom would certainly be their *Aurasa* son ; anticipating this, the Author says, **Ayan cha wiwâho wâchanika ityâdinā** (p. 87 l. 27) *Such a marriage is nominal*[1] &c. (p. 214. l. 17).

This is the meaning intended : As in the case of one approaching under an appointment, annointing the body with ghee and the like is laid down as part of the formality, similarly this marriage also is a subordinate part of the approach by appointment and not a principal act by itself by which there would be the relationship of husband and wife. And hence it is that he is not an *Aurasa* son of the two, but on the other hand he is *a Kṣhetraja* only and of the owner of the field in the absence of a contract viz "Here the issue born will be of both of us". If, however, there be a contract, he is the son of both also.

---

## Yâjñavalkya Verse 128–132.

**Ata eva aurasasama iti** (p 88 l 10) *And accordingly he is equal to a legitimate son* &c. (p. 215 l. 24). The meaning is that since he is the son of an *aurasi* daughter, he is the son of an appointed daughter, and accordingly the similarity with an *Aurasa* son, and not the position of an *Aurasa* itself, as there is a difference.

It may be objected that the exposition that 'the daughter herself regarded as a son' would be opposed to the statement "equal to *Aurasa* is the son of an appointed daughter" as she would in that case have no difference, so the Author says : **Sopyaursasama ityādinā** (p. 88 l. 12) *such a one is only Similar to a legitimate son &c.* (p. 215 l. 29). This is the meaning intended : The particles from the father's body being thinned in the body of a daughter, the difference is due to want of intensiveness in the organs. By stating that 'the third

*PAGE 58 is an appointed daughter' an appointed daughter has been enumerated as the third by **Vasiṣhtha** not by **Yâjñavalkya.**

It may be asked is the *Dwyâmsuhyâyaṇa the Aurasa* son of the owner of the seed, or is he some one of those similar to him ? so the

---

1 वाचनिक: simply because it is laid down in the text, Therefore its scope is confined to the text. यावद्वचनं तावद्वाचनिकं.

Author says **Dwyâmushyâyanâstuiti** (p. 88 l. 14). *The dwyâmushyâyana sons however &c.* Undistinguished from an *Aurasa* i. e. equal to an *Aurasa* son. The Author takes up from the original text, the portion "a *kshetraja* is one begotten on a wife &c." with a view to expound it **kshetrajaḥ kshetrajâtastuiti** (p. 88 ll. 14-15) *kshetraja is a son begotten on a wife &c.* (p. 216 l. 4). [128].

**Tathâ pitṛgṛha eva sansthiteti** (p. 88 l. 18) *and abide in her father's house &c.* (p. 217 l. 4). The meaning is that if a son be born before marriage, as also if one stays at her father's house without[1] being married that is a *damsel*; a son born of her becomes of the maternal grandfather's.

It has been stated that if the damsel remain unmarried, then the son of the damsel becomes the son of the maternal grandfather; if she be married, of the husband; there the Author cites as authority the text of **Manu: Yathâha Manuḥ : Pitṛveśmanīti** (p. 88 l. 19) *As says Manu ......in the house of her father &c.* (p. 217 l. 6).

The meaning of this : In the house of the father a son to whom a damsel gives birth secretly i. e. by misbehaviour, he born of a damsel should be designated a damsel's son; he becomes of the husband. Here from the use of the expression 'of the husband', it appears that if she be married then of the husband, if not, of the maternal grandfather **[129]**.

**Sadṛsam pritisamyuktamiti** ( p. 88. l. 24 ). *of the same class... affectionately* ( p. 217 ll. 17-18 ). 'Of the same class, i. e. of the same *varna*. **Dâturayam pratishedha**[2] **iti** ( p. 88 l. 25 ). *This prohibition regards the giver* (p. 217 l. 20) *i. e.* not the one who accepts the gift.

The Author extends the ceremonial of son-making, described above, to sons bought, sons self-given and like others: **Evam kritaswayamdatteti** (p. 89 l. 2). *The same (ceremonial) should be extended to the case of son bought, self-given &c.* (p. 220 ll. 1-2), **[130]**.

It may be said, indeed what has been said 'land belonging to the same class,' that is improper, as it conflicts with the text of **Manu**, so the Author refutes: **Yattu Manunoktaṃ kriṇīyādityâdinâ** (p. 89. ll. 5-6). *As for the text of* **Manu** *purchases &c.* (p. 220 ll. 8-9). There the Author

1 On p. 58 l. 6 read तथाऽविवाहितैव for तथा विवाहितैव.

2 See **Vyawahāra Mayūkha on this point.**

states a reason : **Swajâtīyeshwayam prokta ityupasamhârâditi** (p. 89. l. 8) *since the Author concludes by saying 'this law is propounded by me in regard to sons equal by class'* &c. ( p. 220. ll. 11-12. ). By the **Yogīśwara** is the remainder. The meaning is that thereby[1] then it would be a conflict with the text of **Yogīśwara (131)**

**Aurasapautrikeyasamawâya iti** (p. 89. l. 16.). *If there be an Aurasa* son and a *Pautrikeya* (p. 221 l. 9.). The meaning is that be there exist an *Aurasa* son as also a son of a *Putrikâ*. **Samastatra vibhâgaḥ syât jyeshṭhatâ nâsti hi striyaḥ itīti** (p. 89. l. 8-9) *the division of the heritage in that case must be equal since there is no right of primogeniture for a woman* &c. (p. 221. ll. 12-13). The meaning of this : After an appointed daughter is constituted, if an *Aurasa* son be born, then the appointed daughter being a woman has no right of primogeniture *i. e.* has not the right to a special share as laid down in[2] "The additional share ( deducted) for the eldest shall be one-twentieth and the best of all chattels," but the division shall be equal. By reason of the statement that '. . . shall be equal,' the *Aurasa* son does not take the entire property. Therefore, this is an exception to the rule in the text " in the absence of the preceding, each next succeeding." This is the meaning.

As the appointed daughter has a right to a share (even) when the *Aurasa* son exists, so other sons also have a right to a share so the Author says: **Tathâ anyeshâmapityādinâ** (p. 89. l. 18.) beginning with *so also in the case of others &c.* ( p. 221. l 14. )

In support of the right of the *Kṣhetraja* and other sons to a share when an *Aurasa* son exists, the Author refers to a text of **Kâtyâyana** as an authority: **Tathâ cha Kâtyâyana ityādinâ** ( p. 89. l. 21. ) beginning with *accordingly Kātyāyana &c.* ( p. 22. l. 1. ) **Kṣhetrajadattakâdaya iti** (p. 89. l. 22.). *The Kṣhetraja, the adopted and other sons &c.* (p. 222. l. 5.) By the term *Ādi* ( and others ) are included the sons bought, made, self-given and deserted. **Asawarṇâḥ Kânīneti** (p. 89. l. 23. ) *Of a different class e.g. the damsel's son &c.* ( p. 222. l. 7.) By the expression 'of a different class' is meant 'exceptionable'.

It has been stated that the sons adopted and others are not entitled to a fourth share if they are hostile to the *Āurasa* son and are devoid of good qualities, but that they should only get food and raiment. Now the Author maintains that a special rule exists when a *Kṣhetraja*

---

1 On p. 58 l. 16 add तथाच.

2 Manu IX. 112.

son is hostile to the *Aurasa* son, or is devoid of good qualities, so the Author says : **Tatra Kṣhetrajasyeti** ( p. 89. l. 30. ) *Here, regarding a Kṣhetraja son &c.* ( p. 222. l. 24. ). **Pratikûlatwa-nirguṇatwa-samuchchayeti** ( p. 89. l. 31. ) *where there is hostility as well as want of good qualities* ( p. 222. l. 27. ). The meaning is that when both exist. By the two texts viz. "are the six heirs and kinsmen" it is indicated that on failure of any other heir nearer in propinquity from among his *Sapiṇḍas* and *Samānodakas*, by the first text, these have the right of taking the inheritence, and by the latter text, those have not that right.

Here the Author states the reason : **gotrarikthe janayiturityâdinâ** (p. 90. l. 8. ) beginning with *the family and the estate of his natural father* ( p. 223. l.12. ) The meaning of this: An adopted son shall never have the *gotra* as also the property of his natural father i. e. the procreator. On the other hand, of him to whom he has been given, the *gotra* and property this adopted son gets. Similarly *Piṇḍa* i. e. the exequial oblation also shall follow the *gotra* and heritage; i. e. those who are connected with the *gotra* and the inheritance, to them also is the *piṇḍa* to be offered, for the reason that the funeral offering i. e. *piṇḍa* which is the means of the funeral offerings such as the *Śrāddha* and the like, fail i. e. recede from the giver i. e. the one who gives.

PAGE 59*.

This, however, should be understood when the giver has other sons and the like. In their absence, however, he himself offers the *piṇḍa* and takes the inheritance. This (is what) comes to be said : Here the use of the son given is (only) indicative of a substituted son. And accordingly, of sons given and others, the right of taking the heritage having been established, while according to the view stated before their right of inheritance not coming up, there would be unauthoritativeness on account of a mutual contradiction. There would thus be the danger of these texts being regarded as meaningless, therefore the interpretation propounded by me is certainly better.

It may be asked indeed in the two groups of six (sons) the first six may have the right of taking the heritage of his *sapiṇḍas* and the rest, and the latter six not, but how as to the father's property? so the Author says: **Pitṛdhanahâritwan tuiti** (p. 90. l. 9. ) *the right of inheriting their father's estate, however &c.* (p.223.ll.14-15.) There the Author states the reason: **Na bhrâtara iti** ( p. 90. l. 10. ) *not brothers &c.* ( p. 223. l. 17. ). It may be said, from the text 'The sons

take the heritage' an inference arises that sons have the right of inheirtance. These sons are *aurasa* only and none others than these, so the Author says: **Aurasasya tu eka evaurasaḥ putra iti** (p. 90 ll.11-12) ...*of the Aurasa son, however...the Aurasa son alone &c.* (p. 223. ll. 19-20). The meaning is that although there are two texts, as they indicate one meaning, there is a repetition. It may be exaggerated that even by analysing the real meaning of the word *dâyāda* (heir) the texts viz. "are the six heirs and Kinsmen" and "are six not heirs and Kinsmen," do not refer to the father's property, so the Author says: **Dâyâdaśabda-syeti** (p. 90. l. 13.) *the word dāyāda &c.* (p. 223. l. 20.)

It[1] may be said, indeed by the text ' The *Aurasa* is he who is procreated on a lawfully wedded 'wife' and other twelve sorts of sons have been pointed out by **Yâjñavalkya** ; and in the text ' in the absence of the preceding the next succeeding ' has also been indicated the order of succession by inheritance, while in the remaining text and also in other Smṛtis has been indicated otherwise. For in the commentary to the treatise on *Dharma* by Āpastamba, has been collated another *Smṛti* thus, " The *Aurasa*, the appointed daughter, those born of the seed and on the field, the son of an appointed daughter, also the son of a re-married woman, the damsel's son, the son received with the bride, the son secretly born, the adopted, the purchased, the self-given, the son made, a deserted son, the son begotten somewhere, thus one's own sons are ten and five." Here there is an inversion of the number as of the order also. The confusion as to the number can be easily removed.

The appointed daughter, and the son of the appointed daughter, although two, are one category. Similarly those born of the seed and on the field. Also a child begotten somewhere is also one among these. Thus these being included in the three[2] sons of the appointed daughter, there are twelve only. Similarly also the inversion as to the order can be seen in itself.

In the work by **Manu**[3] however, "The legitimate son and the son born on the field are entitled to a share in the inheritance of the father ; but the other ten in their order become entitled to the family name and to the share of the inheritance," the appointed daughter being treated as equal to the *Aurasa son* and thus having been included in him, other ten sons have been pointed out.

---

1 From here commences the objection which extends as far as l.22. on p.60 ending with अतः कथं 'पूर्वाभावे परः परः' इत्याशंक्याह.

2 Another reading is simply त्रयाणामंतर्भावे.

3 Ch. IX. 166-178, Sacred Books of the East Vol. XXV. pp. 361-364.

"He[1] whom a man begets on his own wedded wife, should be known as the *Aurasa* son, the first in rank [ 167 ]."

"He who was begotten on the wife[2] of a dead man, or of an impotent, or of one degraded[3], who was appointed duly according to law that son is called the Kshetraja son [ 168 ].

"He whom his mother or his father, in a time of distress affectionately give with ( a libation of ) water and who is of the same class, is called a son given [ 169 ].

"He who being equal[4], and able to discriminate right and wrong, and being endowed with filial virtues is made a son, such a one should be known as a son made [ 170 ].

"One in whose house a child is born and it is not known whose child it is, he is a son born secretly in the ( man's ) house and shall belong to him of whose wife he was born [ 171 ]".

PAGE 60*

'It is not known whose child it is' the meaning is that even when it is determined that he is born of a man of the same *Varṇa* and not from any of the lower or higher *Varṇa* it is not known from which man i. e. from which one in particular he is born. 'Shall belong to him of whose wife he was born' the meaning is that from whose so wife he was born, he shall 'be the son born to his wife.' By the word *talpa* ( wife ) is indicated a wife, e. g. *Gurutalpagaḥ* 'one having an intercourse with the wife of a preceptor.' According to Amara[5] "The word *Talpa* is used to indicate the bed, the market, or the wife."

"He, whom being abandoned by his mother and father or by any one of them, one accepts is known as the son cast off [ 172 ].

"A son whom a damsel secretly bears in the house of her father, one shall name the son of an unmarried damsel *(Kânîna)* and declare such offspring of an unmarried girl ( to belong ) to him who weds her afterwards [ 173 ].

"When a pregnant woman is married, whether knowingly, the child in the womb becomes of the man who marries her, and is called a son received with the bride [ 174 ].

---

1 V. L. स्वयमुत्पादयेद्धि यम्.

2 तल्पजः is a better reading and has been adopted in the translation.

3 पतितस्य. व्याधितस्य (diseased) is another reading.

4 सदृश i. e. equal in caste or by qualities, Cp. शौनक's description of an adopted son पुत्रच्छायावहः।

5 III. 3. 30.

"Him, whom one with the object of having a child buys from his mother and father, such a one is called a son bought whether equal or unequal [175]. *i. e.* equal or unequal in qualities.

"When a woman abandoned by her husband, or a widow, of her own accord contracting a second marriage bears (a son) such (a son) is called the son of a re-married woman [176] 'contracting a second marriage' *i. e.* having again become a wife.

"He who is deprived of his parents or has been abandoned (by them) without cause, and resorts himself, is called a son self-given [177]." 'Without cause' *i. e.* in the absence of degradation or any other such case. 'Resorts' *i. e.* offers. According to **Amarâ**[1] "*Sparśânam* means donation, (*Vidrâṇanam* present, (*vitaraṇam*) giving away (*pratipâdanam*).

He whom a *Brâhmaṇa* begets on a *Śûdrâ* woman through lust, though functioning (as a son) is still (regarded as) a corpse, and is therefore known as a *Pâraśava* (a living corpse). 'Though functioning, is still a corpse' *i. e.* though functioning towards his ancestors by (offering) the *śrâddhâs* &c. *i. e.* pleasing them like any other son, still owing to his uncommendable position is like a corpse *i. e.* functioning like a corpse, and therefore a living corpse.

This is the meaning : Of this son of a *śûdrâ* woman having been born in lawful marriage in the descending order, the legitimacy is undistinguishable. Still while those (others) are living, his right to take the entire property being non-existing, in this chapter[2] he has been named. In the *Smṛti* of **Vasiṣhṭha**,[3] on the other hand, "the third son is an appointed daughter herself" is an inversion of the order ; similarly may be found in other *Smṛtis* also, but all this is not written here through fear of swelling (the bulk of) the book.

Therefore how of the statement 'in the absence of the preceding, each next preceding'?[4] Anticipating this, the Author says : **Vâsiṣhṭhâdiṣhu wargadwayepîti** (p. 90 l. 54.) *in the Institutes of* **Vasiṣhṭha** *and others in both sets &c.* (p. 223. l. 24 and p. 224. l. l.)

This is the import of the refutation here : **Manu**[5] in the text, "The *Aurasa* son as also the *Kṣhetraja*, the son adopted, the son made, the son secretly born, the son cast off, are six heirs and kinsmen ; and the son of an unmarried damsel, the son received with the bride, the son bought, as also the son begotten on a remarried woman, the son self-given, and the son born of a *śûdrâ* woman, are

---

1. II. 7. 29. 2. i. e. of the Mitâkṣharâ. 3. Ch. XVII. 15. 4. Here ends the objection which commenced above at p. 149.l. 11. 5. Ch. IX. 159-160.

six not heirs but kinsmen", having demonstrated the right of the first six of taking the heritage in the absence of his *Sapiṇḍas* or *samânodakas* or any nearer heirs, as also the absence of this in regard to the second six, and on that occasion also having thereafter explained the characteristics of the *Aurasa* son and others, it appears that in reality, the expression "this is the order" is followed in the course of the opening (expression). And hence even the expression 'in order' does not restrict this order in all cases, on the other hand, under

*PAGE 61

certain particular circumstances only. That particular circumstance being, with good qualities, or without good qualities. Similar is the course of the reading in other *Smṛtis* also.

Moreover this statement of **Yâjñavalkya** is consonant with reason also. For, in the case of the Aurasa and the son of an appointed daughter, on account of being born in legitimacy and of the equality[1] (of position) respectively, and of the *Kṣhetraja* son, the son secretly born, the damsel's son, and the son of a remarried woman, the preference over the adopted son is on account of their being produced from one's own seed and on one's own field. In the case of the son received with the wife, although begotten on a wife taken from another he being regarded as one's own his inclusion in the second six is under the text only. Thus everything is unexceptionable.

Moreover, all this has application in another *Yuga*. In the *Kali Age*, however, the *Aurasa* and the *Dattaka* only, and an appointed daughter being (regarded as) equal to an *Aurasa*, as it has been stated that '(sons) other than the adopted and the legitimate should not[2] be accepted as sons.' Here in the remaining portion occurs the remainder[3] thus. "The wise have prescribed that these *dharmas* shall be avoided in the *Kali yuga*." The usage of the illustrious also appears to be the same in *Kali*.

Indeed, let there not be a conflict with other texts; for **Gautama** has enumerated as the tenth in order the son of an appointed daughter who is (here) regarded as equal to an *Aurasa son*, and there would be a conflict with his text. Anticipating this, the Author refutes it: **Gautamiye twiti.** (p. 90 l. 15) *in Gautama's text* **Vijâtivishaya iti** (p. 90 l. 15) *is relative to one differing in tribe &c* (p. 224 l. 4) *i.e.* the meaning is that it has a reference to the son of an appointed daughter born of a *Kṣhatriya* woman or the like from the *Bràhmaṇa* or any other.

---

1 *i. e.* equality of the पौत्रिकेय with और्स.

2 There is a mistake in the print. On p. 61. l. 7. For पुत्रत्वेन read पुत्रत्वे न. The reading as पुत्रत्वेन would be quite admissible in a list of कलिवर्ज्यs. See for a list of कलिवर्ज्यs. *Smṛti-chandrikā*, Ghârpure's Edition p. 12. l. 17.

3 Manu IX. 182.

It may be argued, indeed, under the text "Among brothers sprung from one (father)" by reason of a son of one brother only, other brothers have been described as having a son he is another son in addition to twelve sons, and therefore the mentioning of the number twelve in regard to the sons is improper, So the Author says: **Yattu Bhrâtṛṇâmekajâtânâmityâdinâ** ( p. 90 l. 16 ) *As for the text "Among brothers sprung from one father &c".* ( 224 l. 7. ), The Author states a reason there : **Tatsutâ Gotrajâ bandhuriti** ( p. 90 l. 18 ) *Their sons, the Gotrajas and the Bandhus &c.* ( p. 224 l. 12 ) *i. e.* it will be in conflict with the text of **Yâjñavalkya** viz. " The wife, and the daughters also, the parents, the brother likewise, and their sons, gentiles, cognates, a pupil and a fellow student, " where the right of inheritance of the brothers' son has been demonstrated to be after the brothers. If however, other brothers are regarded as ' having a son ' as by reason of there being a brothers' son (and therefore regarded as) a son, he will be entitled to take the inheritance even before all such as the father and the rest. This is the meaning.

---

## Yājñavalkya Verses 133-134.

The Author points out that the son of a damsel and the like are of the same caste: **Tatra Kânîneti** (p. 90 l. 20). *Here the damsel's son &c.* (p. 254 l, 60). **Varṇajâtilakṣhaṇâbhâwasyoktatwâditi** (p. 90 l. 23.) *as it has already been stated that they are not within the definition of the tribe and class &c* (p. 294 l. 23-24). *i. e.* the absence of the *Varṇa* as for either of the *Kuṇḍa* and *Golaka* having been stated in the Âchârâdhyâya.[1]

The Author mentions the order of inheritance among the Mūrdhâvasikta[2] and the others : **Tathâ anulomajâdînâmiti** (p. 90. l. 23.) *as also issue procreated in the direct order &c.* (p. 224 ll. 24-25) **Nâdhikam daśamâddadyât śûdrâputrâya dharmata iti** ( p. 90. l. 16 ) *no more than a tenth part* should *be given to a son of a Śûdrâ woman, according to law &c.* ( p22. 5. ll. 6e8 )

It may be argued, this is improper. For one share has been stated to be for a son from a *Śûdrâ* woman in the text " Shall have four, three, two, and one shares respectively in the order of their *Varṇas*", while here a tenth share has been mentioned. The answer is no, not so. The four shares of the son of a *Brâhamaṇi* and the three of a *Kṣhatriyâ* make

---

1 The reference here is to the Mitākṣharā on Yājn. I. 90 at p. 25. l. 27. कुण्ड and गोलक. These have been defined by Manu in Ch. III. 174. cited by the Mitākṣharā on Yājn. I. 222.

2 A son born of a *Kṣhatriyâ* woman from a *Brâhmaṇa*. See Yājn. I. 91.

seven; the two of the son of a *Vaiśyi* would make it nine and one for the son of a *Śûdrâ* added together make ten. And thus even in the text 'Four, three, two and one' a tenth share having been stated there is no contradiction, and thus everything is unexceptionable.

**Ye pariṇîtâḥ putrâḥ santîti** ( p. 91. ll. 1–2 ). *if there be sons of a wedded wife &c.* ( p. 226. l. 10 ). *i. e.* sons of a wife by marriage **Swabhâgâdardham dadyâditi** ( p. 91 ll. 2–3.) *should give half from their own allotment &c.* ( p. 226, l. 12 ). The meaning is that they should give from the common property an amount equal to a half of their own share.

---

## Yâjñavalkya Verses 135 & 136.

Having regard to the difficult nature of the propositions stated and to the still more difficult character of those to be now described* and with a view to draw pointed attention of the audience, the Author of these commentaries explains the context by a reference to the verses : **Mukhyagauṇasutâ iti** ( p. 91. l. 7.) *sons, principal and secondary etc.* (p. 227. l. 7.) **Teshâmabhâve sarveshâmiti** (l. 7). *In the absence of them, in the case of all etc.* (207. l. 8.) ' in the case of all ' *i. e.* of the *Brâhmaṇa* and the other *varṇas* as also of the *Mûrdhâvasikta* and other tribes of the descending order, and *sûta* and others born in ( unions of ) the inverse order.

* PAGE 62

"This rule extends to all classes." Here the word 'all' is not adjectival of all ' classes, ' but is independent. Accordingly it should be dissolved as, all, as well as the varṇas ; a combination of these. Intending therefore to indicate that this is part of a compound included in it the Author says, **Sarveshu Mûrdhâvasiktâdishwiti** (p. 91. l. 14). *extending to all tribes whether mûrdhâvasikta and others etc.* (p. 228. ll. 13–14.).

**Patyurno yâjñasañyoga iti smaraṇâditi** (p. 91. l. 17). *Conformably with the etymology of the term as implying a connexion with religious rites &c.* (p. 228 l. 18 and 229 l. 1.). Of this aphorism of **Pâṇini** this is the meaning. The word *Pati* is changed into a form containing the letter *na* (न). When the sacrifice is commenced jointly her offering herself as an agent in the sacrifice, entitles her to enjoy the fruit also. This is what comes to (have been) said : A woman consecrated by the ceremony of marriage can alone take part in a sacrifice and none other. It is only a woman consecrated by the marriage ceremony who is called a *Patnî*. Although while the eldest

has not been prohibited, the younger have no right in a sacrifice still in her absence, or even when she is living, but is affected by a long-continued illness, or has become degraded, others have a right of officiating at a sacrifice, i. e. to say, have the capacity to take part in a sacrifice, and thus by the expression 'association at a sacrifice' is meant a capacity for taking part in a sacrifice.

By the word *Yajña*, marriage itself is mentioned, as even there the offerings are made intending them to be for the Gods, the sacrifice being, marriage itself. Even thus, it is only the married ( woman ) who can be called a *Patnī* and not any other. In that case, there being no marriage without a woman, she is a means for the sacrifice.

**Yathânśam vibhajjya dhanam gṛhṇantīti** ( p. 91. l. 18 ). *They take after dividing the estate according to their respective shares etc.* ( p. 229 l. 4 ). 'According to their respective shares' i. e. According to the text 'four, three, two and one' the *Brāhmaṇī*, *Kṣhatriyâ*, *Vaiśyâ*, and the *Śūdrā* also should take.

**Aputrasyâpyâryakulajâ patnīti** (p. 91. l. 23). *Of a man leaving no male issue, the wife born in an Arya family etc.* (p. 230 ll. 2–3). Here by the expression 'born in a family' is not to be understood that she must be born from one of the same *Varṇa*, but only that ( she is ) born in a good family, as also from one of the same *Varṇa* born in a descending order. 'Who are not unfaithful' i. e. to say, who are chaste.

**Âchchhindyuritarâsu tuiti** ( p. 91. l. 17. *They may however, cut it off in the case of those who behave otherwise* ( p. 230 l. 15 ). 'In the case of others' i. e. in the matter of the unchaste women even 'maintenance' i. e. support, 'may cut off,' i. e. discontinue, i. e. to say should not give. This ( rule regarding ) non-maintenance is in regard to those who are extremely vicious.

The Author points out the adjustment made by **Dhâreśwara** of these texts which are thus mutually contradictory. **Patnī gṛhṇīyâdityetadwachanajâtamiti** ( p. 92 l. 4 ). *The texts which lay down the rule that a wife should take etc.* ( p. 231 ll. 14–15 ) 'This collection of texts' i. e. the texts of **Yâjñavalkya, Vṛaddhamanu, Bṛhadviśṇṇu, Kâtyâyana** and **Bṛhaspati.**

It may be asked whence do you get this, that that wife alone shall be entitled to take the property who is desirous of seeking permission for raising up issue etc. ? Anticipating such a question, and also another as to for what reason ? And with a view to demonstrate that

conclusion itself the Author says **Kuta etaditi** ( p. 92 l. 5. ) *whence is it ?* **Na swatantrâyâ iti** ( l. 5 ) *not if she remained alone by herself etc.* ( p, 232 l. 1. ) i. e. not desiring for an issue by appointment.

The Author states that reason. : **Pitâ harediti** ( l. 5. ) *the father shall take etc.* ( p. 232 l. 2 ). The meaning is that it would be in conflict with the text "The father shall take of him who leaves no son."

It may then be asked, what then ? Anticipating such a question and intending to lay down the relative force of both these texts as authorities and even there intending to state a reason, the Author says : **Vyawasthâkâraṇaṃ waktavyamiti** ( p. 92 l. 6. ) *a rule of adjustment must be stated etc.* ( p. 232. l. 3. )

It may be said, indeed, let that rule be any other, why should it necessarily contemplate the *levirate* ? Anticipating this the Author says, **Nânyaditi** ( l. 6 ). *No other* etc. ( p. 232 l. 4 ). Not only is it from force of reason that the inheritance shall be of her who desires a *levirate,* but there is a text of **Gautama** also, as the Author says: **Gautamawachanâchcheti** ( l. 6 ) *and also on the authority of the text of* **Gautama** ( p. 232 ll. 4–5 ).

The Author expounds the word *Wâ*, 'or', in ' or may seek (to raise an) offspring, as used in the sense of 'if', **Yadi bijam lipseteti** (l. 8). *provided she seek progeny &c.* (p. 233. l. 4).

**Dadyâttasyaiwa taddhanamiti** (l. 9). *deliver that property even to that* (p. 233 l. 7.) 'That property' *i. e.* his *i. e.* the brother's property should be delivered to him. By this statement, it appears it has a reference to a separated brother. Otherwise, in the absence of a partition, there being no separate property of his own, the statement in the text ' the division must then be made equally' that the division should be equal appears to be in reference to undivided property, as if (already) divided there would be (no occasion for a) division.

**Yogîśwareṇâpi kila wakṣhayta iti** (p. 92. l. 15.) *The same, it is pretended, will be declared later on vy the Lord of the yogis* (p. 234. l. 1). Here the word '*kila*'—it is pretended—is used to indicate disapprobation; as in " you will indeed fight " since another interpretation of the text of the Lord of the Yogis viz. " their sonless wives etc. " will hereafter be stated.

**Tathâ cha Kenâpi smṛtamiti** (l. 18) *it has been declared by some author* (p. 234. l. 7.) 'By some author' is indicative of disrespect.

Therefore in this statement of the objection, the text has been set out in accordance with the reasoning in the original. The Author refutes the adjustment propounded by **Dhâreśwara. Tadanupapannamiti** (l. 20) *That is wrong* (p. 234 l. 12) **Aprastutatwâchcheti** (l. 20). *nor is it suggested by the premises &c.* ( l. 14 ) i. e. it is not relevant to the matter in hand.

PAGE 63* There the Author states an objection to the first course : **Tatra niyogesyaiveti** (l. 22). *There if the appointment alone &c.* (p. 234 l. 17). It may be argued, indeed, if the appointment alone is the cause for the inheritance, when that exists, even a woman without a son may get the property, what objection (is there) ? So the Author says : **Utpannasya cha putrasyeti** (l. 22) *of the son born to the estate &c.* (p. 234 l. 18).

This is the import : In the case of a son born[1] of appointment, that (fact) not being the cause[2] of his title to inheriting property, he will have no right of inheritance, There would be an opposition to the texts such as "of heirs dividing after the death of the father[3], let the mother also take an equal share", and "one who departed for heaven leaving no male issue ; this rule extends to all classes", laying down the mode of division among sons of twelve sorts, as also stating the rule of inheritance for others.

The Author refutes the second alternative : **Atha tadapatyasyaiveti** (l. 23). *On the other hand if the offspring alone &c.* (p. 234 l. 19). This is the import : If the cause of succession to the property were (the existence of) only the son, the widow should not be stated (to have a right) as in "the widow, the daughter also &c." because she will (then) have no right of inheritance to the property, while this text lays down the causes which induce a right of the succession to the property.

It may be said, indeed, for a wife to succeed to the property six alternatives are possible : thus, either the appointment is the cause, or the child born of it be the cause, or there be a special cause, and even in the special cause, is the appointment the principal, or the child, or have the two equal importance ? Thus the suggestion of only two alternatives is improper. To this the answer is, no, this is not so ; by a

1 See note 7 on p. 234 of the Mitākṣharâ

2 Read निमित्तत्वात्तस्य for निमित्तत्वांतरस्य.

3 पितुरूर्ध्वं. पित्रोरूर्ध्वं would be meaningless.

refutation of the first two alternatives alone stand the other alternatives refuted, their separate mention is not contemplated.

It is thus: When in the special cause, the appointment is the principal, then the child becomes a subordinate[1], and although the child is itself a cause, it will be as if it is not a cause, as it is dependent on another. Moreover, also, a right to the succession to the property will be reached for one who has not begotten a son, and thus the refutation stated in connection with the first alternative is in that itself. If, however, the child be the principal, then it should not be said "the wife &c" and thus the fault is apparent in itself. If both be regarded as the principal (cause), the wife under an appointment as well as the son having the right to succession to the property, by simply mentioning "The wife, the daughter" (and suggesting) the succession to the property of the wife alone would be improper. If, on the other hand, it be said, that in the case of both being the principal (cause) it comes to be stated that the son begotten by the appointment is the principal, even then do not begin (the rule) with "the wife &c" as the son alone has the right of succession to the property. Thus the two refutations stated before are from all points of view incontestable, there is no incongrurity whatsoever, and the statement of the two alternatives is unobjectionable.

It may be argued again, indeed, what has been suggested that "the wife &c." should not be begun, is not correct. The women's right of succession to property is through the husband, or through the son *vide* the text[2] "The woman does not deserve independence". And thus there being no right of succession for one who has no husband, as also one who has no son, it is clear that in the absence of the husband a son can be had only by appointment, and it is through him that the wife's right of succession to the property has been stated in "the wife, the daughters &c." Therefore the text beginning with "the wife &c." is with a meaning, and the adjustment stated by us also may be accepted: Anticipating this, the Author says: **Atha strīṇāmiti** (l. 24). *But it is said, women &c.* (p. 235 l. 1). This may be so, if there be a rule that the succession of women to property can only be through the husband or the son, But such a rule itself does not hold, as succession of women to property is known to be through other media also.

---

1 उपसर्जनम् as opposed to प्रधानः. A word which loses its original independent character, either by composition or derivation. e. g. पाणिनीयः—a pupil of Pāṇini, here Paṇini becomes उपसर्जन, so also in राजपुरुषः राजन् becomes उपसर्जन.

2 Manu IX. 3.

The Author refutes : **Tadapyasadadhyagnīti adhyâwahanikamiti** (p. 92 ll. 24. 25). *That is wrong......what was given before the nuptial fire and what was presented in the bridal procession &c.* (p. 235 ll. 3–5). The Author will expound[1] later on the (nature of the) *strīdhana* known as *Adhyâwahanika* thus, "That, again, which a woman receives while she is conducted from her father's house, is instanced as the property of a woman under the name of *Adhyâwahanika* ( gift presented in the bridal procession )."

If her succession to the property be as one seeking an appoinment and through the son, that son is a *kṣhetraja* son ; and in this way the right of succession to the property of this *kṣhetraja* son will necessarily come to be laid down, and this very rule having been stated in the text "the *aurasa* son is he who is procreated on a lawfully wedded wife &c" the wife should not be mentioned again as in "the wife, the daughters &c." as it would be tautologous, so the Author says **Kinchetyādinâ** (l. 26) beginning with *moreover &c.* (l. 8).

It may be argued again, indeed, this rule viz. that the property of one who dies sonless, she takes irrespective of her seeking an issue by appointment, but then what in that case would be the force of the texts of **Gautama** ? Anticipating this and with a view to indicate their application the Author repeats the text of **Gautama** together with the substance of the objection, **Atha piṇḍagotrarṣhisambandhīti** (l. 28) **tadâ anapatyasya strīdhanam gṛhṇīyāditi** ( l. 30 ). *But......Kinsmen Connected by piṇḍa, by family name, or by descent from the same patriarch* (p, 235 ll. 15-19)......*then the widow of one who leaves no issue may share the effects &c.* (ll. 24–25). The order of words is, the effects of one who leaves no issue, the woman may take.

*PAGE 64 Here the import is this : After having stated that kinsmen connected by the family name and by descent from the same patriarch take the inheritance, as also the wife, he prescribes two courses for her who has lost her husband. Of these, this is one course: **Sâ strībījam wā lipseteti** (l. 28)......*or the widow may seek to raise up offspring &c.* (p. 235 l. 19) *i. e.* she should contemplate a son by a recourse to the rule of appointment. The word *wâ* (or) here is not indicative of (*yadi*) but, it imports an option. And an option contemplates an alternative course. That alternative itself is the second alternative. And it appears that, that course, although not actually expressed in the text, by the force of the use of the word 'or' (*wâ*), would

---

1 See Mitākṣharā Text p. 100 ll. 22–23. Translation p. 272. ll. 9–11.

be known as the counterpart of the rule laying down the desire for an issue by appointment, to the one of remaining chaste. This is what is (intended to be) said; a two-fold course of conduct is presented, either desire for a son through appointment, or remain chaste.

**Tadavibhakte samsṛshṭīni wā bhartari preta iti** (p. 93 l. 5) *it ...if the husband die unseparated...or re-united &c.* (p. 236 ll. 15 17). This is what is (intented to be) said: when the husband dies unseparated, or if the husband die a re-united member, and that because in either of these two cases his widow has no right of succession to the property, therefore thinking that if she herself has no right to the property, let her son have it, she should not thus resort to the begetting of issue by appointment through 'covetousness for the estate'.

It may be said, that premising about the re-united members **Nârada** begins, "the shares of re-united brethren are considered to be exclusively theirs" and continues : " Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his property excepting the *strīdhana* (of his wife). They should make provision for the maintenance of his wives until their death", in pursuance to the introduction "the other brothers who are re-united shall take." This is the rule laid down. The same import has been laid down in the text "If among brothers, any one die without issue &c." and thus there would be tautology. Anticipating such an objection, the Author refutes it: **Na cha bhrâtṛṇâmityâdinâ** (p. 93. l. 9. ) *Nor......... among brothers &c.* ( p. 236. ll. 25-27. ) This is the meaning: While expounding at details what was stated before in brief viz. 'among these, the woman's property' ( *strīdhana* ) is not liable for a distribution and also 'the maintenance of these women should be provided for', by these two sentences two rules of different import have been stated, so that they do not merely state again what was stated before by which there would be a tautology. Here, by the expression "excepting the *strīdhana*" a rule as to the indivisibility of that property, and by the latter clauses the latter rule, have been indicated.

The Author points out the meaning of the text of the Lord of the Yogis, according to his own view : **Yadapyaputrâ Yoṣhita iti** ( p. 93. l. 11. ) *As for the passage......the children, wives &c.* ( p. 237. l. 6. ) As for the text of **Manu**[1] viz. "That brother who takes the wealth of a deceased brother, or also his wife, after begetting a child for the

---

1 IX. 146.

brother, should verily hand over that wealth to him, which was stated in the course of the statement of the objector as demonstrating that even when a brother is a separated member, his widow could take the property only through the means of an appointment, there **Manu** himself having prohibited the begetting of an issue by appointment, its refutation was facilitated, and the other texts cited without exibiting the main proposition should be regarded as so cited with a view to test the intelligence of the teacher and as indicative of the view intended by himself.

The refutation would be in this way: Having censured the begetting of issue by appointment by the text "By begetting issue from another by an appointment, they would destroy the ancient law", that text cannot be taken as laying down a rule that 'one must necessarily procreate, by appointment, a son on the widow of a separated brother and hand over his property to him', but thereby is prohibited for a woman the continuing solely by oneself as per the text "A woman does not deserve independence". While staying at the house of her brother-in-law, and while her property is being looked after by the brother-in-law owing to woman's incapability, out of a desire for progeny, if the woman wishes to have issue by appointment, which though censured is established under the law, then after the issue is born, the brother-in-law should not covet the wealth, but make it over to him. Thus should the texts be expounded, as (otherwise) the several texts would conflict. Therefore also in the text "He who bears the wealth", the root भृञ (*bhṛn*) is used by **Manu** in the sense of 'to hold' 'to support'.

It may be argued, indeed, the word sacrifice includes by implication all religious purposes whatever, and is not expressive of a sacrifice (as such only) and then gifts and offerings are also included. Anticipating this, the Author says: **Atha Yajñaśabdasyeti** (p. 97. l. 13.) *Or again, if......if the word sacrifice &c.* (p. 237. l. 13.) The renunciation of a thing directed towards a deity is an 'offering' (*Yâgaḥ*); the same object ending with the throwing into the fire is a 'burnt offering' (*Homaḥ*). Establishing another's ownership by terminating one's own right of ownership is a 'gift' (*Dâna*); thus is the distinction between a *Yâga*, *Homa* and *Dâna*. Thus if the use of wealth were for religious purposes (*Dharma*) only, the attainment of worldly prosperity (*Artha*) which is accomplished by wealth and which is secured by agriculture, commerce &c., as also wordly desires (*Kâma*) which also is accomplished by wealth, and which has a connection with flowers,

sandal and the like will not be. So the author refutes : **Evam tarhiarthakâmayoriti** ( l. 14. ) *Thus then the other two—viz. Artha and Kâma* ( p. 238. l. 2. ).

It may be said, yes, that is so, and so the Author says : **Tathâ satîtyâdineti** ( l. 14. ) *in that case* &c. ( l. 4. ) In respect of religious merit ( *Dharma* ), wealth ( *Artha* ) and pleasure ( *Kâma* ), to the utmost of his power, one must not let the morning, midday and the evening be fruitless. This is the order of words in the text of **Gautama.**

**Na tathaitâni Śakyante iti** ( l. 16. ) *These cannot effectually be &c.* ( p. 238. l. 9. ) This has been stated by **Manu**[1] in connection with the restraint of senses commencing with "should strive to restrain the organs which run wild among sensual objects. The renunciation of all pleasures is far superior than the attainment of them; these cannot be so restrained by abstinence". The meaning of this : of all pleasures, the renunciation is far superior i. e. is better, i. e. is the best than their attainment i. e. enjoyment. These i. e. these organs which beget sins on account of their exclusive attachment for passions, cannot be so restrained i. e. properly curbed by abstinence i. e. non-enjoyment of the beautiful form and the like ( media of ) pleasures. The meaning is the appreciation of the inherent faults cannot be so attained by an abstinence from pleasures as by an experience of them. The import is, that there would be a conflict with a text which demonstrates that wealth ( *Artha* ) and pleasure ( *Kâma* ) must necessarily be secured, their attainment being a necessary duty as the enjoyment of unforbidden pleasures creates a feeling of indifference for them.

If wealth he intended for a sacrifice, then it would be opposed to the established conclusion that the wearing of gold is for a worldly object ( *Purushârtha* ), which was demonstrated by the *Siddhântin*[2] in refutation to the first position[3] stated viz. that by the text "Gold should be worn" the wearing of gold has been prescribed in connection with a religious[4] object ( *Kratwartha* ), so the Author says : **Api cha dhanasya yajñârthatwe hiraṇyaṃ dhâryamitîti...tatpratyuddhṛtam syâditi** ( p. 93. ll. 17–18. ) *Moreover, if wealth be designed for sacrifices, the argument would be reversed by which......... 'let gold be preserved &c.'* ( p. 238. ll. 10–12. ). 'Reversed' ( *pratyuddhṛtam* ) i. e. undone, in other words, would be contradicted.

1 XX. II 88, 95–96.

2 *i. e.* the established final conclusion.

3 *i. e.* the पूर्वपक्ष.

4 As contrasted with a worldly end ( पुरुषार्थ )

This is an *Adhikaraṇa*[1] in the fourth *Pâda* of the third *Adhyâya* ( which runs thus ) "On the other hand, it ( it do ) not ( occur in ) in any ( particular ) context, ( it is in ) his ordinary capacity; since it differs ( from those i. e. found stated in the context )."

There is a passage in the *Śruti* viz. "Therefore, so that one may become comely, gold should be worn ; his enemy becomes uncomely". Here a doubt arises. Has this wearing of gold been prescribed as part of a sacrificial detail, or is the wearing laid down as a rite in connection with the gold in the sacrifice, or, is it because the wearing of gold which has been prescribed in the passage 'gold happens to be (worn) on the hand, and in pursuance of that a goodness of colour i. e. a comeliness of appearance is prescribed, by the passage 'gold should be worn'; or perhaps it may be that the wearing of gold has been prescribed in a worldly capacity ( *purushârthatâ* ).

The first position here is thus stated : Although here only the wearing of gold happens to be laid down, still by reason of the anticipation of its results as it has been prescribed by a passage in the Veda, and thus the act is part of the Vedic duties, by a parity with the *Darśa Pūrṇamâsa* and other Vedic sacrifices a Vedic act carrying certain results pervades the mind. There in the same Vedic operation, the wearing will become part of the sacrifice as immediately or remotely productive of a result after the manner of the principal sacrifice. And thus, its principal characteristic being realised the wearing is a rite, and as is the case with sprinkling in the passage 'he sprinkles the paddy' which obviates all expectations as to the past or the future, any anticipation for heaven or the like is not proper. This is one view.

Or, 'by the potential passive termination *ya* (य) in the expression 'Gold should be worn', wearing has been laid as a duty, and gold, which is the object, being in the accusative case, it comes to be the principal object, and therefore the wearing is a rite. As is the case with the sprinkling in the passage 'he sprinkles the paddy'. Under the maxim 'A thing

1 The Sūtras of Vyâsa (उत्तरमिमांसा) and Jaimini (पुर्वमिमांसा) are divided into Adhyâyas, the Adhyâyas into Pâdas, and the Pâdas into *Adhikaraṇas* or sections, each Adhikaraṇa covering a number of Sūtras or Aphorisms. According to the Mīmânsakas a complete Adhikaraṇa consists of five parts.
विषयो विशयश्चैव पूर्वपक्षस्तथोत्तरम् । निर्णयश्चेति सिद्धांत : शास्त्रेऽधिकरणं स्मृतम् ॥
विषय is the subject matter to be explained ; विशय or संशय is the doubt or question arising upon the matter; पूर्वपक्ष is the first side or the *prima facie* argument and उत्तर or उत्तरपक्ष is the answer and, निर्णय or सिद्धान्त is the final demonstrated conclusion.

which has a use in the past or the future must be ( properly ) purified', the ( purificatory ) rite must be performed of that which has been used ( in the past ) or which will be used ( in future ). And use can only be of such as have any object. Of that which has no object, as e. g. worldly gold, cannot have a rite e. g. of wearing, it cannot be regarded as part of the sacrifice which has a use in near or in future, like the principal part of the sacrifice, taking it to be an injunction for wearing in pursuance of the gold as part of the sacrifice, but as a purificatory act like the sprinkling. This is another ( view ).

Or still another view is that gold is part of the sacrifice and therefore wearing is only a repetition of the principal, and by the short form *suvarṇa*, only a good colour is laid down.

And thus in all the three ways, the position being that it is part of a religious duty ( *Kratwartha* ), the Answer is as follows:

As to what has been said there viz. that on account of a resemblance in having the act and with the Vaidic ceremonials, by a parity of action and by regard to the expected result it appears to be for a religious purpose, such a rule cannot be deduced even as regards the securing of the heavenly regions on account of its being the act.

In regard to passages such as "one desirous of heaven should offer a sacrifice with the *Darśa*[1] and *Pūrṇamāsa*"[2] the heaven and the like being produced in regard to the agent, and on account of its Vaidika Character, it secures both the creation of heaven as well the sacrifice, its having the act as well as the *Vaidka*[3] character is the twofold cause, and not necessarily the sacrifice only, so that even in the case of a special rule, there might happen to be secured the merit of a sacrifice.

Nor can there be realisation of the gold in the sacrifice, as in the repetition of the rule as to gold, a rule as to the rite of wearing may come up. As also on account of the existence of gold among the people, the gold in the sacrifice is not realised. Wearing is not necessarily the rite as to the wearing, as the wearing can be accounted for even without an invisible result. The potential passive termination *ya*, when used in regard to the object indicates only the capacity to be accomplished,

1 The sarifice which is to be performed at the end of the dark and the beginning of the bright half of a month.

2 The sacrifice which is to be performed at the end of the bright half and the beginning of the dark half.

3 *i. e.* as it has been presented by a *Sruti* text.

and not the principal place, as it may also occur in regard to acts not desired.

PAGE 66* And therefore the rule as to the form and qualities of gold is not in repetition of a rule regarding wearing, owing to the non-realisation of the rule as to the wearing as part of a sacrifice, and also as wearing may be seen among the people. Therefore the wearing of gold is not for a religious purpose. If it be a rule there must be the result. That result would, in the absence of an *Arthawâda*,[1] be heaven under the *Viśwajit*[2] maxim. With an *Arthawâda*, however, it would be in itself under the *Râtrisatra*[3] maxim. Here however on account of the *Śruti* text viz. "his ememy becomes uncomely", the uncomeliness of the enemy and the comeliness of self are the results and thus the established final conclusion is that the wearing of the gold is for a worldly purpose.

**Tadastu pāratantryamiti** (p. 93 l. 20) *let there be dependence &c.* (p. 239 l. 7). 'Dependence' i. e. the state of not[4] being alone. Hence there would be no conflict even if she took her husband's wealth.

**Yajñārthamevārjitam yaddhanamiti** (p. 93 l. 21) *wealth which was obtained for the (express) purpose of a sacrifice &c.* (p. 239 ll. 10–11). In

---

1 Laugākshi defines an Arthavāda as: प्राशस्त्यनिन्दान्यपरं वाक्यमर्थवादः. etc. Sentences whose purport is either praise (glorification) or blame are called Arthavādas. Such sentences effect a purpose by a Lakshaṇā. It is from the praise or blame that an inference is to be drawn as to whether a certain act is prohibited or permitted. It is found in two forms, viz. as part of a *Vidhi* or of a *Nishedha*. It is of three kinds as will be seen from the following: विरोधे गुणवादः स्यादनुवादोऽवधारिते । भूतार्थवादस्तद्धानादर्थवादास्त्रिधा मतः ॥

2 विश्वजिन्न्यायः This has been set out in Jaimini's Fourth Adhyāya Third Pâda and Sutrâs 5, 6 and 7. The Adhikaraṇa made up by these Sutrās is called the *Viswajidadhikaraṇa*. According to this maxim, where in an Arthawâda sentence a rule has been stated but no result is mentioned, it being necessary for all *Vidhi* sentences to have a result, a result has to be imagined, and one thus imagined is the heaven.

In order that this maxim may apply, two conditions are necessary. (1) There should be no mention of the फल or result (2) nor should it have been stated in connection with or proximity to an act having a fruit or result (फलवत्कर्म).

3 रात्रिसत्रन्याय—Where in the sentence laying down the injunction or *Vidhi* the result or फल is not stated, there the result incorporated in a sentence containing an *Arthavāda* is deduced e.g. प्रतितिष्ठन्ति ह etc. According to this maxim that construction is preferable which is never to the liberal construction, even though by it you get only a non-obligatory text and not an obligatory text. (See Jaimini IV. 3. 17–19).

4 अस्थितिः It appears there is an अवग्रह after एकाकिनीभूत्वा, so that the correct reading would be एकाकिनीभूत्वाऽस्थितिः । See Bâlambhatti, which makes this clear.

the text : "Wealth was produced for the sake of a sacrifice" there is no rule by way of an injunction that "wealth produced is for a sacrifice" but that it means assuming that wealth was obtained by alms[1] for a sacrifice by approaching the King (and received from him), as for a sacrifice i. e. intending it for a sacrifice, such wealth must be used by him for a sacrifice only. If through greed or the like such use be not made by him, even the sons should use it for religious purposes only, and thus the rule laid down is that wealth obtained for a sacrifice must invariably be used for a religious purpose. And hence therefore that wealth must not be taken by those who are not appointed for a religious act, since they have no authority to perform a religious act. And hence also has it been said that "(she should) get just enough for food and clothing".

**Doṣhasrawaṇasya putrâdishwapyaviśeṣhâditi** (p. 93 l. 22) *has been declared to be an offence even in the case of sons and other successors generally* (p. 239 ll. 13-14). The meaning is that in the text[2] "...articles for a sacrifice...disposes not..." the rule has been stated generally without specifying the name of the acquirer, but as in "One must not speak an untruth", having been directed for all men, the acquirer as also his sons and the rest incur a sin by not appropriating for a sacrifice wealth intended for a sacrifice.

The Author explains the aforestated text of **Kâtyâyana**: **Adâyikam dāyādârrhitamityādinā** (p. 93 l. 12) *Heirless property or wealth which is without an heir &c.* (p. 239 ll. 20-21). The Author expounds the second half of this very text of **Kātyâyana** : **Asyāpawāda iti** (p. 93 l. 27) *an exception &c.* (p. 240 l. 3)

Having thus expounded the text the Author explains a conflict in it : **Etadapyawaruddhastrīviṣhayamiti** (p. 93 l. 27). *Even this relates to women kept in concubinage &c.* (p. 24 ll. 6-7). There the cause : **Yoṣhidgrahaṇâditi** (p. 93 l. 27) *For the term employed is females &c* (p. 24 l 7) **Anyatra brâhmaṇāt kintwiti** (l. 28) *except...of a Brâhmaṇa, but &c.* (p. 240 l. 9). The point of the text[3] viz. "Heirless property goes to the King &c". being an introduction preceding the text of **Nârada**, the application here should be made in conformity with the sequence of the context. Excepting that of a Brâhmaṇa heirless property goes to the king. But even there, for his women maintenance should be given.

1 यागभिक्षया Lit : by a begging round for a sacrifice.
2 Cf Manu II. 25 cited above.
3 Viz. of Kātyāyana stated above.

The Author sums up his case (thus) demonstrated : **Tasmâdwibhaktâsaṃsṛshtîniti** (p. 93 l. 20) *Therefore...a separated not re-united &c.* (p. 240 ll. 14-15)

It may be said, indeed, a summing up is proper only of what has been stated. Moreover what has been said above and summarised, has not been stated either in the text "the wife, daughters &c," nor in its commentary ; how then can that be stated in the summing up ?

Anticipating this, and considering that it is right that all statements should be so directed that they must not[1] conflict with others, and desiring to point out that by regard to the contextual sequence of what has been said and will be said hereafter, such and such a point has been obtained and thus in effect it would be a summary of what has been said, the Author reminds of what has been stated and points out what will be said hereafter : **Vibhâgasyoktatwâditi** (p. 93 l. 30) *Partition had been discussed* (p. 240 l. 17).

The Author (now) wishes to point out that the interpretations put on the text of **Yâjñavalkya and others** viz. "The wife, daughters &c." and the like, vesting a right in the wife and others, viz. that if the property be small then the property of a sonless man the wife may take &c. (that)[2] has been refuted, what will now be said, so the Author says : **Etenālpadhanavishayatwamiti** ( p. 93. l. 32. ) *restricting to a small portion of the property* ( *is refuted* ) *by this* ( p. 24. l. 19. )

The Author sets out the method of the refutation : **Tathâ hityâdinâ** ( p. 93. l. 32. ) *For even &c.* ( p. 220. l. 20. ) **Jîwadwibhâge ajîwe cheti** ( p. 94. l. 1. ) *partition made in owner's life-time or after his decease &c.* ( p. 240. l. 21. ) i. e. whether the husband be living or dead.

**Wyâmohamâtramiti** ( p. 94. l. 3. ) *a mere error &c.* ( p. 241. l. 1. ) The meaning is that when whether during the life-time of the husband or after the husband's death and when there are sons, the wife has the right to a share equal to that of a son and not a bare maintenance, then is it necessary to be said that of a man devoid of issue she gets the entire property ; thus even by the *a fortiori* rule the right of the wife to the entire property being established, a statement that she does not get more than ( a bare ) maintenance and raiment is a mere delusion.

---

1 There is a mistake in the print. On p. 66. l. 23 for स्वेतरवाक्यविरोधेनैव read स्वेतरवाक्याविरोधेनैव.

2 For यद् read तद् in l. 27. on p. 66.

Moreover, in the absence of the other sons entitled to take a share, her right to a share equal to that of a son who is entitled to the entire property having been stated it is consonant

PAGE 67*. with reason also that "of one separated and without issue, the wife takes the estate". Therefore this statement of persons oblivious of what has been stated before and after, must certainly be disregarded.

The Author anticipates a suggestion that the words 'equal portions' are (used as) indicative of money useful for a subsistence : **Atha patnyaḥ Kâryâ iti** ( p. 94. l. 3. ) *But...his wives must be made &c.* ( p. 241. ll. 3–4. ) Refutes, **Tadasad iti** ( p. 94. l. 4. ) *that is wrong* ( p. 241. l. 6. ) This is the meaning : The words equal and portions are known among the people as indicating a share and an equality according to their root meaning. And it would be meaningless to give up their own meaning without a cause.

It may be said that these words may signify their own meaning as an alternative course, and so there is not entirely a meaninglessness. Anticipating this particular objection, the Author says : **Syânmatamiti** ( p. 94. l. 5. ) *Or it may be said &c.* ( p. 241. l. 9. ) Refutes, **Tachcha neti** ( l. 6. ) *That too would be wrong &c.* ( p. 241. l. 11. )

The Author indicates the nature of the variableness in the precept : **Tathâ hîtyâdinâ** ( p. 93. l. 6. ) *since &c.* ( l. 12. ) This is the meaning : The two texts of "The wives should be given equal shares", "the mother also shall take an equal share" by regard to another rule viz. "They should also be maintained" and like others lay down the rule that in the case of a husband with ample wealth, whether living or dead, at the time of a partition with the sons a wife should get property barely useful for maintenance ; in the case of a husband with small wealth, however, it states a rule that the wife shall take a share equal to that of her son.

A sentence once uttered is in one place dependent and in another not dependent, and thus has no one character, and there is a variableness in the precept in this case, as by taking the present as an illustration the Author points out the *Adhikaraṇa* treating of this rule **Tathâ châturmâsyeṣhu ityâdinâ** ( p. 94. l. 8. ) *Thus in the instance of the Châturmâsya sacrifices &c.* (p. 241. l. 19. ). This is an *Adhikaraṇa* in the Seventh (Adhyāya) and the Third Pāda.[1] "On the other hand,

1 Jaimini Sūtras VII. 3. 19. See note 7 in the Mitākṣharā pp, 242–244.

the carrying of the fire pertains to the Soma sacrifice, because the other is not ordained".

In the Soma sacrifice, the carrying of the fire is with special characteristics, while the carrying of the fire in the *Darśa* and *Pūrṇamâsa* sacrifices with no special characteristics "carrying the fire" means carrying the fire from the Gārhapatya alter to the Âhawanīya. The northern altar, moreover, is only in the *Soma* sacrifice and not in the *Darśa* or *Pūrṇamāsa.* Such is the position regarding the performance.

In this state of things the Chāturmāsya means four performances viz. *Vaiśvadeva, Varuṇapraghâsa, Sâkamedha* and *Śunâsīrīya.* There are texts in the *Smṛti* "They carry in two, therefore with two they go ; or these two are the thighs of the sacrifice". Here is a sentence laying down the rule in "In two i. e. of the two parts of the *Châturmâsya,* they carry". While in "therefore with two they go to" i. e. approach the fruit is an *Arthawâda* sentence.

There a doubt arises, viz. by the clause "They carry in two" a carrying has been laid down similar to the carrying in the *Soma* sacrifice. This is what is ( intended to be ) said : Is the carrying to be done like the carrying done in the *Soma* sacrifice, or is it that a carrying generally[1] has been prescribed. The first party maintains that it is proper to say that the carrying prescribed is the carrying like as is done in the *Soma* sacrifice, as it is only by an extension that the carrying generally could be predicated in the case of the *Darśa* and *Pūrṇamâsa* where it is the basic act[2], and thus carrying generally would be meaningless.

It may be said, let the carrying be a repetition of the carrying which is done under a command, why treat it as a *Vidhi* (a command). The answer is no. A *Vidhi* is inferred on account of the injunctive termination in the word *praṇayanti* 'they carry'. Moreover by the two sentences "the northern altar is not to be established in the *Vaiśvadeva* nor in the *Śunāsīrīya*" a prohibition for a northern altar has been stated in regard to the two portions viz. *Vaiśvadeva* and *Śunâsīrīya.* While under the rule as to 'carrying, like as in the Soma sacrifice', the northern altar is also reached, but in the carrying in the (case of

1 *per contra* as is done in the *Soma* sacrifice.

2 प्रकृति (as opposed to विकृति.)—The basic procedure containing parts which are common for all occasions, the variations suited for each particular occasion being known as विकृति. See Note 7 on p. 242 of the Mitâksharâ.

the). *Darśa* and *Púrṇamâsa* the Northern altar is absent, and thus the carrying being reached, but the northern altar being not reached, the prohibition contained in passages such as "Not in the *Vaiśvadeva* is the Northern altar to be established", and the like does not hold.

It may be said, indeed, when (once) the northern altar has been reached by reason of the direction as to the carrying of the fire after the manner of the carrying in the Soma sacrifice, what is (the meaning of) this attempt at catching a rogue by asserting a prohibition that for the northern altar there will not be the *Vaiśvadeva* ? If it be argued that by reason of the fact that on account of the clause "In this, the Northern altar is to be established" occurring in the *Châturmâsya* sacrifice, the northern altar having been ordained, the two clauses viz. "Not in the *Vaiśvadeva* &c." would be prohibitive of the northern altar which has been reached under the command, the answer is, no. The clause "In this the northern altar is to be established" ordains a northern altar for the Châturmâsya quite generally and without reservation and even for all the four portions. (While) by the two sentences viz. "Not in the *Vaiśvadeva*" a prohibition has been laid down in the case of the two portions, and thus a positive and a negative injunction existing in the sentences, on account of the equality (of the two) an option is reached. And hence the following meaning is obtained. The clause "In this the northern altar is to be established" shall ( be taken to ) ordain a northern altar only when the observance of the negative rule contained in "Not in the *Śunâsîrîya* &c.". has no scope in reference to the two clauses negativing it in the case of the two portions of *Vaiśvadeva* and *Śunâsîrîya*. While in the case of the other two portions, it ordains as usual, the northern altar' In that way, in the case of two portions, the northern altar is ordained without regard to any other sentence, while in the case of the other two portions, the injunction is in one alternative by regard to another sentence, and thus there would be the fault of a variableness in the precept, therefore the rule is that the carrying is to be after the manner of the carrying in the *Soma* sacrifice.

PAGE 68*

The *(Râddhântin)* advocate of the final conclusion, however, says that as there is a termination indicative of a command, the carrying of the fire must be (taken as) a command, and by the very reason of its being a command, it appears that this carrying is different from the carrying in the case of the Darśa and *Púrṇamasa* sacrifices.

It must not, however, be said that there is nothing particular in this as regards the act on the ground that merely starting the carrying generally does not become an extension but is merely a recommendation. Therefore the *Arthawâda* contained in the passage "therefore with two they carry &c". being in conformity with the command is reconcilable with it and may therefore be regarded as authority. Moreover, on the strength of the *Arthawâda* the northern altar having been established in the conclusion in regard to the two middle[1] parts, there is a speciality even in its performance, as will be declared hereafter by the *Guru* in the later[2] *Adhikarana* in the established conclusions.

Then, the two sentences viz: not in the *Vaiśvadeva* sacrifice is the Northern altar established, nor in the *Śunâsiriya* are a permanent *Anuwâda* of the first and the last portions. The clause "In this is the Northern altar to be established" has the effect of having the Northern altar for the middling portion only and thus the Northern altar not being in all the four portions, there is no variableness of the precept also, and having been ordained only after the carrying of the fire, there is no carrying for the first and the last, as the Northern altar has been prohibited.

There is a text in the *Śruti* viz. "They carry in two". There a doubt arises: Is this carrying of the fire ordained for two portions for the first and the last portions or for the middling ones? The first Party maintains that the carrying of the fire is for the first and the last portions, as by the text "not in the *Vaiśvadeva* nor in the *Śunâsirîya* &c" the northern altar has been prohibited for the first and the last portions, and a prohibition of a thing is not possible unless it is reached.[3] The *Arthcwâda* sentences viz. "These two are the thighs of the sacrifice-the *Varunapraghâsa* and the *Sâkamedha*" and "therefore with two they go." as also the text "They carry in two", having an application to the middling portions, there also is the carrying. And by the text "Not in the *Vaiśvadeva* is the Northern altar established, nor in the *Śunâsiriya*" is a constant repetition as to the first and the last portions. This is the established conclusion.

Now we resume the point under consideration. In the *Châturmâsya* sacrifices, by the text "They carry in two" the carrying of the fire

1 *i. e.* the *Varunapraghâsa* and *Sâkamedha*

2 *i. e.* in the 10th Adhikarana known as मध्यमयोर्द्वयोरेव प्रणयनाधिकरणम्.

3 A prohibition will have no scope unless its object has been established before. For a prohibition of that which does not exist is meaningless.

has been ordained. There the First Party maintains that the carrying ordained here is after the manner of the carrying of fire in the *Soma* sacrifice. The import being that the carrying should be made just as the carrying of the fire is done in the Soma sacrifice. In this state of things the inference is that the carrying of the fire is ordained, and the inference cannot be of extension from the clause "like the *Soma* sacrifice". And thus anticipating a question, what is the reason for the extension as in "should be done like that"? The answer would be that the two sentences "Not in the *Vaiśwadeva* nor in the *Śunāsirīya*" prohibitive of the Northern altar contemplate the existence of the Northern altar and its existence also under the text "Like the Soma sacrifice" having been reached by an extended application, the Northern altar also becomes established possesed of all the characteristics thereof, and thus the prohibitive texts themselves are the cause of the command about the carrying of the fire after the manner of the carrying in the *Soma* sacrifice.

This is the substance of the position of the First Party, which the Author states : **Dwayoḥ praṇayantītityatra purvapakṣhiṇetyādinā vedīpratiṣhedhe darśita ityantena** (p. 96 ll. 9–10) Beginning with *dwayoḥ praṇayanti...by the opponent* (p. 241 l. 20) and ending with *extend...prohibitions &c.* (p. (241 ll. 22-25).

A prohibition contemplates a previous existence. And that previous existence, even without the carrying of the fire as in the Soma sacrifice, but by reason of its being stated in connection with the Chāturmāsya-yāga in the texts "In this the Northern altar should be established" and the establishment of the Northern altar being for the First and the last portions viz the *Vaiśwadeva*" and *Śunāsirīya* sacrifices having been reached, and thus the prohibitive rule having been established by sentences like "Not in the *Vaiśvadeva*" and the like the position of the First Party that the carrying of the fire should be performed similarly as in the *Soma* sacrifice does not hold: Thus the Author refutes the position of the First Party : **Rāddhāntaikadeśenetyādinā pratiṣhedhoyamityabhihita ityantena** (p. 94 ll. 10–11). Beginning with *by an advocate of the right opinion* (p. 242 l. 1) and ending with *it is urged... with reference to a prohibition of it &c.* (p. 242 ll. 6-8).

It may be argued, indeed, then in this way the sentence viz, "In this the Northern altar is to be established" ordains the Northern altar even for all the four portions, while the two clauses "Not in the *Vaiśvadeva* sacrifice is the Northern altar to be established, nor in the *Śunāsirīya*"

prohibit the Northern altar for two portions. Thus on account of the two alternatives of a positive and negative command in regard to the Northern altar under express texts, in the establishment of the Northern altar comes to be an alternative course, and so there is a case for an option. From that also the following will be the result : The clause "In this the Northern altar is to be established" is to be taken as ordaining the establishment of the Northern altar as an alternative also it is not prohibited by sentences like the two viz. "Not in the *Vaiṣva-deva &c*" and like others in regard to the first and the last portions. While as regards the middling portions, even without regard to the prohibitive texts it causes these to be reached as under a *nitya*[1] *vidhi* and thus the same sentence once uttered is applicable as an alternative course in one case, while in another case it is absolutely binding, and so by reason of an absence of a uniform application there would be a variableness in the precept, thus the upholder of the First Party refutes the view of one side of the advocate of the correct view, so the Author says **Punaḥ purvapakṣhiṇetyâdinâ vidhivaiṣhamyaṃ darśitamityantena** (p. 94 ll. 12–13) Beginning with *it is urged in reply by the opponent* (p. 242 l. 6.) and ending with *has shown the variableness of the precept* (l. ).

PAGE 69

After a side of the correct opinion, it is proper that the principal view of the correct opinion should be known and the statement viz. "again the First Party &c". is to be understood as with a view that there may not be any confusion about it.

The Author states the right doctrine **Râddhântepiti** ( p. 94 l. 14) *even as the right opinion &c.* (p. 24 l. 13). While laying down the rules in accordance with the view of a side of the correct opinion, a variableness of the precept is unavoidable, and the text "They carry in two, therefore with two they go ; and they are the two thighs of the sacrifice" being of *an Arthawâda* nature and applicable to the two middling portions, the carrying of the fire will be there only, as wherever the carrying there only will be the Northern altar and the command about the establishment of the Northern altar viz. "In this the Northern altar is to be established" being also in the nature of an *Arthawâda*, the Northern altar will also be in the same two portions. The Northen altar not being possible in the First or the Last,

---

1 A *nitya Vidhi* is that which is absolutely binding on all persons, and not dependent on any act or choice ; distinguished from it is the *Kâmya Vidhi* which comes into force only in the event of the performer having chosen to do some act voluntarily.

the text "Not in the *Vaiśwadeva &c.*" is a repetition of a perpetual precept as to the First and the Last portions after the manner of the text "Neither in the firmament nor in the heaven is the fire to be kindled". This is the meaning.

By this collection of literature viz. "Among the Châturmâsya sacrifices" &c., this is what is (intended to be) said : As there in the opinion of the side of the correct opinion there would be the fault of the variableness of the precept, so in the texts viz. "The wives should be made partakers of an equal share", "The mother also shall take an equal share", the words share and equal though once uttered in the case of the husband having considerable wealth by regard to the text "and shall also provide for the maintenance of his &c." and like others are to be interpreted as ordaining wealth necessary for their maintenance, while in the case of his having small property, without regard to other texts, as indicating an invariable rule for a share equal to that of a son. This is the exposition of *Śrikara* and others also and there also the fault of the variableness of the precept is unavoidable.

Some other writers also have pointed out an adjustment of the texts "the wife, the daughters" &c. Desiring to refute it the Author points it out : **Yadapi matamityâdinâ** (p. 94 l. 17) *Again as to the doctrine &c.* (p. 244 l. 1). The Author states the meaning in substance of the texts of **Manu and Śankha : Aputrasya dhanam bhrâtrgâmiti** ( p. 94 l. 19 ) *The wealth of a man, leaving no male issue goes to his brothers &c.* (p. 244 l. 7).

The Author states the meaning in substance of the text of **Nârada: Bharaṇopayuktam dhanam patnî labhate ityapi sthitamiti** (l. 20). *It also becomes established that the wife obtains (as much) wealth (as is) sufficient for her maintenance &c.* (p. 244 ll. 9-10). In this way as stated above when it becomes established that the wealth of a brother dying without issue goes to the other brothers, and his wife also gets property sufficient for her maintenance, she whose husband is without issue but had plenty of wealth, on his demise these two things occur viz. the brothers take the inheritance, and the wife gets bare maintenance.

If, however, the wealth be just sufficient for the maintenance of the wife or even not sufficient, then a doubt would arise as to whether under the authority of the texts of **Manu and Śankta** the brothers take, or under the text of **Nârada** the wife alone takes, and with a view to remove it the Lord of the Yogis, by reason of the fact that no

conflict had arisen, and on account of the rule that the prior is stronger, and intending to make a statement demonstrating the order the wife alone will take and so the text "the wife and the daughters" has been begun, so the Author says: **Evam sthite bahudhana ityâdinâ ityārabdhamityantena** (p. 94 ll. 20–23). Beginning with *this being so if a rich man* (p. 244 l. 10) and ending with......*has been propounded &c.* (l. 15). That is, the meaning is, that the wife does not always become the inheritor of the entire property of a sonless man.

The Author refutes: **Tadapyatreti** (p. 94 l. 23). *This opinion too* (p. 244 l. 17). "The Revered Teacher" i. e. the **Viśvarūpâchârya**. The meaning is that because of the reason that the text of **Manu** viz. "Of him who leaves no male issue, the father shall take the inheritance" has another meaning.

The Author points out that very other meaning, **Yataḥ pitā hareditvâdinâ** (p. 94 l. 24) beginning with *For...the text "the father shall take &c."* (p. 244 ll. 18–19). This is the meaning: This text cannot be taken as laying down the order of succession for an inheritance by "the father &c," by which the adjustment stated above may stand, but on the other hand it is intended to indicate the right by stating that even the father and the others have a right to take the heritage, as an option is inferrable from the word 'or' *(wâ)* in the text. *"...the inheritance, or even brothers &c."* (p. 245 l. 9), and an option occurs in equals alone. If an order be intended viz. that "in the absence of the father or other heirs", a prominence is inferrable for the father and thus there being an absence of equality between him and others, the thought of an option is inadmissible. Thus taking the text of **Manu** as indicative of a right and enumertaing as "wife or the daughter," and then even after enumerating the father and brother under the text 'the father shall take of one who leaves no male issue" the right of the father and the brother certainly holds; and then it would be improper to say that the text "the wife, the daughter &c"., is with the object of stating that only the property which is sufficient for maintenance or even less than that goes to the wife.

PAGE 70*

The Author points out the text of **Śankha** viz. "The wealth of a man, who departs for heaven, leaving no male issue" as explained in a different manner by the Revered Teacher: **Śankhavachanamapi saṃsṛṣhṭabhrâtṛviṣhayamiti** (p. 74 l. 26) *also the text of Śankha relates to re-united brothers &c.* (p. 245 l. 5) i. e. relating to (such) brothers as out of a feeling of affection or the like have become united after partition and continued to be so.

**Asmâdwachanât prakarṇâditi** (p. 94 l. 26) *From this text or from the context &c.* (p. 245 l. 7) i. e. from the text "the wife, the daughter &c".

Moreover, if the text "the wife the daughters &c" be taken as indicating that the wife takes a small wealth as also the remaining portion of the text viz. "On failure of the prior among these the next in order is heir to the estate &c" if it be argued that from a consideration of the text viz. "And they should provide for the maintenance of the wives of him for their life-time" if the property be just sufficient for maintenance then only the wife, failing her the daughter takes, and not if there be much wealth, then it would bring the property to the wife and the daughter as a contingent alternative, while in the case of the father, brother and their sons however the succession to the inheritance is indicated as an absolute rule without regard to other texts.

The Author suggets that the fault of the variableness of the precept is inherent in this also, same as stated above, so he says, **Dhanabhâguttarottara ityasya chetyâdinâ** (p. 90 l. 27) under the text beginning with *on failure of the first of these the next in order shall be heir* &c. (p. 255 ll. 7-8). "From this very passage" (l. 17) i. e. from the text of **Hârita**. **Etadevâbhipretyoktamiti** (p. 92 l. 31) *and with this same view it has been said &c.* (pp. 265 l. 18 op. 266 l. 1). The meaning is that one who is not suspected of incontinency, takes the entire property. The Author concludes **Tasmâditi** (p. 96 l. 2) *Therefore &c.* (p. 246 l. 6).

**Duhitara iti** (p. 95 l. 4). *daughters &c.* (p. 246 l. 11.) Here through the principal term daughter every kind of female issue is intended to be stated, and this quality of being a female issue is uniform even in (the case of) other castes. By the termination, moreover, the plurality in castes also is inferred. That, moreover, is uncontradicted even in regard to daughters of different castes. Therefore by reason of the principal term and the termination daughters of equal and unequal castes are inferred.

These, moreover, shall take equal and unequal shares in the ratio of four, three, two, and one in their respective order, so the Author says : **Duhitara iti bahuvachanamiti** (p. 95 l. 5). *The plural is used in 'the daughters &c* (p. 246 l. 12). **Angâdangâtsambhavatiti** (l. 7) *proceeds from his several limbs* &c. (p. 246 ll. 18-19) i. e. is formed from all the organs. **Tathâ pratiṣhthitâpraliṣhthitâsamawâye iti** (p. 95 l. 9). *moreover if the competition be between an enriched and unprovided for daughter &c.* (p. 246 ll. 19-20) *Pratiṣhṭhitâḥ*—provided

i. e. enriched. "Unprovided" i. e. with money &c. **Stridhanaṃ duhitṛṇâmiti** (p. 95 l. 10). *A woman's property goes to her daughters &c.* (p. 247 l. 1). The meaning is that the woman's property goes to unmarried daughters. Failing these, to the moneyless.

It may be said that this text of **Gautama** has a reference to the mother's property and not to the father's property, so the Author says : **Pitṛdhanepi samânatwâditi** (l. 10) *is equally applicable to the case of the father's estate* &c. (p. 247 l. 2). This is the meaning : By the text "The woman's property goes to the daughters", &c. the rule relating to daughters has been laid with reference to the property of a woman, and thus the qualification of the object intended, the woman is meant without a particularisation, and hence the generality of the rule.

It may be urged, that the text "the wife, the daughters &c" states the right of an appointed daughter to the property in the absence of the wife, and not any (kind of) daughter, in which case (alone) can be the order, in the absence of the unmarried, the unprovided, and in their absence the provided &c. Anticipating such an objection, the Author refutes ; **Na Chaitatputrikâviṣhayamityâdinâ** (p. 96 l. 7) *nor............ that this relates to the appointed daughter &c.* (p. 247 l. 3). The meaning is that having already been mentioned in the chapter on sons, it is inappropriate to state it again.

The Author explains according to its import the word 'also' (*cha*) in the text "the wife, the daughters also &c." : **Chaśabdât duhitrabhâve iti** (p. 95 l. 13). *By the particle cha, on failure of daughters &c.* (p. 24 l. 7). **Aputrapautrasantâna iti** (p. 95 l. 13). *If neither son, nor son's son, nor issue &c.* (p. 247 l. 9). The issue in the form of the son, the grandson and the rest ; The absence of that is having neither son, grandson nor issue. When such a thing occurs i. e. in the absence[1] of the son, grandson and daughters, the sons of the daughters alone, who are in the place of the son's sons, shall take the wealth. "Of ancestors" i. e. of the maternal grandfather and the like ; "in regard to the performance of obsequies" i. e. the Śrâddha and the like, the daughter's sons are considered *i. e.* regarded, as son's sons. They are indeed entitled. The meaning is that in regard to *Śrâdha* and the like, the daughter's sons are alone regarded as in the place of the son's sons.

1 *i. e.* where there are no sons, grandsons, or other issue as is the other reading तस्मिन्नसति ।

**Akrtā wâ krtâ wâpiti** (p. 95 l. 15). *Whether not appointed or appointed &c.* (p. 248 l. 1). Whether appointed as a daughter or not so appointed, by reason of her being a daughter. "From an equal" *i. e.* from one of the same class, a son which she obtains, by that son, the maternal grandfather becomes a paternal grandfather *i. e.* one having a son's son. He shall take his property and also offer the funeral cake. This is the meaning.

In the term "the parents" the semi-residual (Dwandwa) compound is intended, so the Author says : **Pitaru mâtâpitarâwiti** (p. 95 l. 16) *the two parents i. e. the mother and the father &c.* (p. 248 l. 6).

It may be said, in the absence of the daughter, and the daughter's son, the right of succession to the property for the two parents has been laid down. There on account of the semi-residual compound a question may arise viz. is the succession to the property jointly by them, or severally each, and there also, is the order of succession optional or has it been fixed for each, so the Author says : **Yadapiti** (l. 16). *Although &c.* (p. 248 l. 8).

This is the meaning: According to the rule of grammar[1] the "Dual (*Dwandwa*) compound is used to express cumulation"

PAGE 71*

A dual compound laying down the mutual conjunction or the aggregation of things, gives prominence to both the things. And therefore in the dual compound the importance of the first or the latter word is equal, otherwise the two words will not have equal prominence. In this state of things under the rule of grammar[2] viz. "The word *'pitr'* (is optionally only retained when spoken of) along with *mâtr*", one word having been dropped, even if no order is indicated in the compound expressed by the remaining word *Pitr* (father) or even of the term *pitarau,* as these are expressive of a simultaneousness still the mother and the father occur in the sentence expressing the dissolution of the compound, and having regard to the rule of grammar[3] viz "(in a dual compound) the more honoured is (placed) first", the word *mâtr* being placed first ; and even when there is no semi-residual compound, in the compound also the expression being "the mother and the father" the word mother is heard first, and thus in either case the word mother is uttered first, the order as to the meaning is deducible from the order of the pronunciation of the words. In the present case also, in the case of the necessity for determining the order in regard to

1 Pāṇini II, 2,29. 2. I. 2,70. 3. अभ्यर्हितं च द्वन्द्वे पूर्वं स्यात्. S. K. 209.

succession to property no other order being available the order should be the one inferrable in pursuance of the order in the dissolution (of the compound), and so the right of the father to the property should be understood to be in the absence of the mother.

The mother having an uncommon relationship towards her own sons, her propinquity is much more intense as compared with that of the father. The fatherhood of the father is common towards sons born of a wife of the same *varna* as also towards sons born of the Kshatriyà and other wives, while as considered from the mother there is no commonness and the propinquity is nearer, and thus the mother has a greater propinquity.

Moreover by the text " He who is the nearest *sapinda &c.*" a rule having been laid down that the property of a *sapinda* goes to that near *sapinda* who is nearest of the *sapindas*, the mother alone is entitled to succeed first to the property, so the Author says : **Kincha pitâ putrāntâreshwityâdinā** (p. 95 ll. 20–21) beginning with *besides, the father is.........to the other sons &c.* (p. 250 l. 4). Although by reason of his having greater parts of father's body the son has greater propinquity to the father as compared with the mother, and this is the basic reason for propinquity, still, among other sons the father being the common (parent) and the mother not common, and on account of the fact that this closely related female member unremote, and by the one-membered word "the two parents", having the order as set out in its dissolution, this order (of succession) itself is better. This is the import.

It may be said, indeed, among the people the cause is seen to be immediately allied. In the text, "the nearest among the sapindas &c." by the use of the word *Sapinda*, it is only among the *Sapindas* that propinquity is regarded as the cause for succession to property, and not among the *Samânodakas*. There another reason must be mentioned. Let that also be among the *Sapindas* even, why this propinquity ? Anticipating this, the Author states that the term *Sapinda* is expressive by implication of the *Samanodakas* also. Therefore by this very text is propinquity the cause for succession to property in the case of both, so the Author says : **Na cha sapindeshwewetyâdinâ** ( p. 95. l. 22. ) *Nor... restricted to Sapindas &c.* ( p. 250. l. 8 ). **Riktham bhrâtara eva weti** ( p. 96. l. 2. ) *the inheritance or the brothers &c.* ( p. 251. l. 5. ) Here the word (*wâ*) 'or' is indicative of an adjustment[1] of the option.

---

1 See note 6 on p. 35 of the Mitâksharâ.

It has been stated that in the absence of the mother, the father shall take the inheritance. Others have stated it otherwise. With a view to refute that, the Author offers supplementary comments after the manner of the lion's backward[1]: gaze **Yatpunardhâreśwareṇetyâdinâ** ( p. 96. l. 2. ) *As to what...by Dhâreśwara &c.* ( p. 251. l. 6. )

This is the import: Property taken by the father is the father's property and becomes even of the sons of the kind of the caste of *Mûrdhâvasikta*[2], while as regards property taken by the paternal grandmother, being the mother's property, it goes to her daughters, failing these to the daughter's sons, sons and the rest in order, and thus would go to heirs of the same caste only, in this way under the text of **Manu** thus expanded by a reasoning like the above, in the absence of the mother, the grandmother shall take. But this the venerable Teacher the professor of Nyâya the **Viśwarupâchârya** does not accept, and so the Author (also) refutes: **Etadapyâchârya iti** ( p. 96. l. 6. ) *This even the Holy Teacher* &c. ( p. 252. l. 1. )

That may be so, if there be any thing wrong if the sons of a different caste take. But that is not so. On the other hand, these also have a right to the inheritance under an express text, and thus while refuting the opinion of one side, the Author mentions a reason: **Vijâtîyaputrâṇâmapîti**( p. 96. l. 6. ) *of sons even dissimilar in class &c.* ( p. 252. l. 2. )

The text of **Manu** viz. "And if the mother also be dead, the father's mother shall take the heritage" is not to be explained as laying down an order, but only that the father's mother also is entitled to succeed to the property and thus as expositive of her right. Or it should be expounded by taking as understood that after the mother, the father, the brother, his sons are heirs to the property in the order, and that failing these even the father's mother shall take. Or, there is no necessity of taking anything as understood; by the text "the father's mother should take the heritage" the word father occurring there, indicates not only the father, but by an extension, the son and the grandson also born in his family. Because the utterance of the

---

1 सिंहावलोकनन्याय. It is used when one casts a retrospective glance at what he has left behind, while at the same time he is proceeding, just as the lion, while going onward in search of prey now and then bends his neck backward to see if anything be within his reach.

2 See Yâjñavalkya I. 91. The issue born to a Brâhmaṇa from a Kshatriyâ wife.

Easterns is like aphorisms[1]. And therefore, it appears that the expression containing the two words "the father's mother" indicates the right of the father's mother to succeed to the property thereafter. Hence also, what has been said after refuting the position of another viz. "Grandmother, thus it has not been stated" viz. that failing the parents, the brothers have the right of inheritance, the Author resumes that by a special reference: **Bhrâtṛshwapi sodarâ ityâdinâ** (p. 96. l. 8.) Beginning with, *among brothers also,...of the whole blood &c.* (p. 253. l. 9.) **Tatputrâḥ pitṛkrameṇa dhanabhâja iti** (p. 96. l. 11.) *their sons share the heritage in the order of their respective fathers &c.* (p. 252. ll. 15-16.). The meaning is that under the rule "Among claimants by different fathers, the allotment of shares shall be by regard to the fathers" when the sons of brothers are one, two, or even more, the determination of their shares shall be through[2] their fathers and not through them individually.

PAGE 72*.

**Bhrâtṛputrasamawâye iti** (l. 11.) *In case of competition between brothers and brother's sons &c.* (p. 253. l. 1.) of the one deceased, there may be some brothers, as also sons of brothers whose fathers had died. In such a case the meaning is when brothers and brother's sons co-exist. **Bhrātrabhave bhrâtṛputrâṇâmiti** (p. 96. l. 12.) *of brother's sons...on failure of brothers &c.* (p. 255. l. 3.); the meaning is that as under the text "The two parents, likewise, the brother, their sons the gotrajas &c." in the absence of the brothers, the right of the brother's sons has been demonstrated.

**Yadâ twaputre bhrâtari swaryâte ityâdi** (l. 13). *When, however, a brother has died leaving no male issue &c.* (p. 253. l. 4.). This is the meaning.—From among several brothers who had become separated one without issue or wife had died and parents also do not exist, then after the right of inheritance to his property had become vested in the brothers, but before the distribution of the brother's property another brother died and his sons are in existence, in such a case, as it has been stated that when brothers and brothers' sons exist together brothers' alone is (the right to succeed to) the property, brothers alone must not take the property by distribution, but the brothers' sons also,

---

1 सूत्र has been thus defined : a short or concise technical sentence used as a mnemonial rule. स्वल्पाक्षरमसंदिग्धं सारवद्विश्वतोमुखम् । अस्तोभमनवद्यं च सूत्रं सूत्रविदो विदुः ॥ शास्त्रीयगभीरबह्वर्थप्रतिपादकः संक्षिप्ताक्षरः शब्दसंदर्भविशेषः सूत्रमित्याचक्षते ।

2 *i. e.* the division shall be *per stirpes* and not *per capita*.

because the right of succession to the property had become vested in their father, and (also) because sons have a right in the property of their father. There this is the special point (of distinction) between brothers and brothers' sons : the brothers obtain their own share, the brothers' sons the share of their father.

**Gotrajâḥ pitâmahî sapinḍâḥ samânodakâscheti** (p. 96. l. 16). *The Gotrajas are the paternal grandmother, the sapinḍās and samānodakās* (p. 254. l. 1). The separation of the words in the compound should be thus : the paternal grandmother, and the *sapinḍâs* and the *samânodakâs*.

It may be asked, it is proper[1] that the paternal grand-mother should succeed to the property after the mother, how then is the text stating her succession after the brothers' sons ? Anticipating such a question, the Author says **Mâtaryapi cha vṛttâyâm piturmâtâ dhanaṃ harediti Mâtranantaram ityâdinâ** (p. 96. ll. 17–18). *And if the mother also be dead, the father's mother shall take the property; after the mother &c.* (p. 254. l. 5.) This is the argument. The text of **Manu** viz. " If the mother also be dead &c." cited above being intended merely to indicate the right of succession to the property, has no reference in substance to the order ( of succession ). Having stated that in the absence of sons and grandsons, the daughters and sons of daughters become heirs to the property, and the text " the wife and the daughters also &c." and under the text " The two parents and the brothers also " the mother and father being unseparated, thereafter, being of the same *gotra*, being intensively connected by reason of their belonging to their own fathers' family and owing to their being immediately mentioned, and also on account of the remaining portion of the text stating that " on failure of the prior among them, the next in order is indeed. (heir) &c. " the order of succession as far as the brothers and their sons being closely contiguous, not entering the paternal grandmother among these in the matter of succession to the property, the paternal grandmother being drawn and kept out as far as the sons of brothers, and there being hereafter no obstruction to the order of succession which occurs to the mind under the text " And if the mother also be dead, the paternal grandmother shall take the property. " and the text mentioning the *gotrajâs* after the brother's sons, following the line of succession suggested by the text of **Manu** the paternal grandmother alone by reason of her propinquity and also on account of her being a *gotraja*[2], succeeds to the property only after the brothers' sons.

1 युक्तं is the reading in all manuscripts. उक्तं (stated) would be better.
2 The reading is गोत्रजातत्व and not गोत्रजत्व as it should have been.

Here some (writers) have said, after the daughter's son the father and the mother are entitled to succeed simultaneously to the property, both being propinquitous, and hence also the two should take by dividing (among them), and not (in) the order, mother and in her absence the father. With this very object the semi-residual compound was made (use of) by Yājñavalkya.

Moreover, that an order is not inferred in a un-residual compound is instanced in the maxim[1] discussed in a topic in the First Pâda of the Fifth Book thus, "Or the (order of the) subordinate acts is according to the order of the principal acts, by reason of their being subservient to it". "There shall be two Sāraswata sacrifices". In this text two sacrifices with postherds as oblations have been ordained. That of which the deity is *Saraswati* is a Sāraswata postherd. That of which the deity is *Saraswān* is a Saraswata. These two Saraswata sacrifices. Thus there is a semiresidual compound. In such a position a couple of verses[2] from the Vedas have been first recited in reference to a female goddess, and thereafter a couple of verses in regard to a male deity have been recited, and so the order of performance should be in accordance with the order of the recital of the hymns. This is the principal subject of the topic.

Now a consideration of the meaning of the topic. As this is a variant of the basic sacrifice with postherds, by an extension, the offering of four handfuls ordained there have to be performed. There a doubt arises. Should, the oblations be offered indiscriminately or whether first in regard to the female deity and thereafter addressed to the male deity is the oblation to be offered? There no order being inferable in regard to the offering of the oblation which was reached by the extended application, the position comes to be that the oblation should be offered without regard to (any) order; to which the reply is that the oblation should be offered in the same order in the principal sacrifice. As for the principal sacrifices, the order of their

PAGE 73

performance is in accordance with the order of recital of the pair[3] of verses to be recited at the sacrifice. Therefore, the correct opinion is that the performance of the offering of the oblation should be in the same order as in the principal sacrifice,

1 Jaimini. V. 1. 14. This chapter deals with the question of the *order* of the performance of Acts. This is the 7th. Adhikarana in this Pâda. (क्रम).

2 अनुवाक्या a verse recited by the Hotṛ priest in which the deity is invoked to accept the offering prepared for him प्रशास्त्रपाक्या तद्भावे होशपाक्या देवताह्वानी ऋक्. आम्नायः—Sacred texts handed down by tradition,

3 युगल—a pair of verses.

so that there may not be any departure from the established[1] rules as to the order (of performance).

Thus in this topic[2] in the sentence of extension viz. "Two sacrifices to sāraswata occur", the order (of performance) not being determinable owing to the semi-residual compound the order of the performance of the sacrifices adopted was in substance[3] in pursuance of the order of the text as stated in the pair of verses to be repeated at the sacrifice.

Therefore here also in the text "the two parents, the brothers &c", by reason of the semi-residual compound in the expression "the two parents" no order being determinable, the position is that generally after the daughter's son, the mother and the father (would) simultaneously succeed to the property. In their absence the brothers; failing these, their sons. This text of the Lord of the Yogis which is based on a general rule stands[4] refuted by an express text of **Kâtyâyana** as an express text preponderates over a general rule. That text moreover is (this): "When one separated dies, in the absence of sons, the father shall take the property, or the brother, or the mother, or his father's mother in the order". The meaning of this has thus been stated: The use of the term 'sons' is indicative by implication of (one) nearer in propinquity. Thus in the absence of sons, son's sons, the wife, the daughter and the daughter's son, the father succeeds first to the property.

**Alleged faults in the Mitākshara.**

Faults have been pointed out in the exposition by the Author of the **Mitākshara**. These are as under (1) What has been stated viz that the greater propinquity is certainly that of the mother as the mother is not the common parent of the other sons, while the father is a parent common to all other sons, is wrong. Because (it is stated) there can be no discrimination as to propinquity between a mother and a father in regard to the issue.

(2) Another is that by the term *gotrajas* are expressed "the paternal grandmother, *sapindas* and *samānodakas* also." And thus, under

---

1 प्रमित—measured.

2 अधिकरण. 3 अर्थतो.

4 Viśweśwara Bhaṭṭa states here the position of those who maintain that the father succeeds first.
From here Viśweśwara Bhaṭṭa is stating other objections raised against the conclusion of the Mitākshara. These are in substance a reproduction of the position in the Smṛtichandrikā &c. and other writers See p. 297. ll. 19 20. pp. 300. ll. 10. 12.

the text "the two parents and brothers also" the order of heirs commencing with the sons and ending with the brother's sons being compact, the grandmother having no scope to enter in the midst, under the text. "If the mother also be dead, the father's mother shall take the property", after the mother, the paternal grandmother does not acquire the property. But being (thus) postponed obtains it after the brother's sons. All that is said abvove is also wrong. The expression *gotrajas* being a uniresidual compound of similar terms, the males alone are included. And also the order of succession of *gotrajas* with the brothers' sons stated before being compact with regard to the males, the males alone with out distinction being intended even then the paternal grandmother has no scope for an entry. In this way and similarly.

The Answer

The whole of this is inartistic. For, it is not that in a uni-residual compound the order (of words) cannot be determined. In the sentence of the dissolution (of the compound) and in the multi-residuals the fact that the mother has a prior place itself determines the order. If it be said that it has been stated in the text two "*sāraswata* sacrifices be offered", the answer is, no; there is no conflict with the rule propounded by that maxim. Moreover, *sâraswata* and *saraswatâ* make two *sâraswatas*, and under the aphorism[1] "Of words having the same form, and in the same case termination, one is retained", there having a uni-residual, the order there cannot be determined even in the clause of dissolution, therefore in answer to an inquiry as to "which is the order here" it has been demonstrated that the order of the hymns in the *śruti* would be the proper order for the performance of the sacrifice in pursuance of the order of the pair of verses to be recited at the oblation, and not that in a uni-residual compound an order cannot be determined. In the present instance, regarding the compound term "The two parents" in the sentence of dissolution, it comes out to be a uni-residual compound of dissimilar terms under the aphorism[2] "The word *pitr*—father (is optionally only retained when spoken of along) with *mâtṛ*—mother" the order being necessarily determined in the dissolution, that order must indeed be accepted.

As to what has been said that "There can be no discrimination as to propinquity between mother and father in regard to the issue" that also is stupid. By reason of conceiving, bearing, and feeding the fœtus

1 This has a reference to the rule of grammar contained in Pāiṇni I. 2. 64. सरूपतामेकशेष एकविभक्तौ. "Of the words having the same form and all in the same case termination, the last one is not retained therefore गोत्रजः+गोत्रजः+ गोत्रजः = गोत्रजाः

2 I 2. 70.

the mother certainly creates a greater propinquity in the issue; while the father only pours the seed. And things visible having greater preponderance over things invisible, by reason of conferring greater visible obligations, the mother's propinquity[1] is greater.

Also, as to what has been said that the expression *gotrajas* being a uni-residual compound of similar terms, and the order of succession being fixed by the brother and the brother's son, the paternal grand-mother cannot have an entry even after the brother's son, that is not sound. Even dissimilar persons such as women and men e. g. *gotrajas* and *gotrajas* can be expressed with one case-termination without a conflict as in *Jāti-dravya-guṇaḥ.*[2]

Nor is the order compact. There is no compactness of order in heirs such as the father and others as far as brother's sons and the *gotrajas*. Therefore in the absence of the wife, the daughter, failing her the daughter's son, in his absence the mother, after her the father, failing him the brothers, in their absence the brothers sons, and in their absence the paternal grandmother. This is the order. As says **Bṛhaspati** "Of a son who had no wife and who is without issue, when dead, the mother should be known as the heir entitled to take the property, or the brother with her consent".

PAGE 74*. The meaning of this: of him who has died without issue his wife shall take the property. Failing her, the daughter; failing her, the daughter's son; in his absence, the mother, or with the mother's consent the brother of the deceased. Even if the brother takes, by the very fact of his having taken with the mother's consent, it is certainly (to be deemed to have been) taken by the mother, and this is the mother's right of succession to the property prior to the father.

Some say that in the text of **Bṛhaspati** the word daughter[3] is indicative, by implication, of the daughter, the daughter's son and the father. That is dull. Implication in words arises through inconclusiveness.[4] Thus everywhere unquestionably in the absence of the

1 संनिकर्ष: lit. means proximity, nearness, vicinity.

2 Here two things are to be noted. The plural of the word गोत्रज whether used in the masculine or feminine gender, is the same viz. गोत्रजाः. Also under the principles enunciated in I. 2. 67 पुमान् स्त्रिया and illustrated in I. 2-68. as also the rules in I. 2.69-71, there is no conflict by the compound having one case termination.

3 Some copies read तनय which does not hold with the context.

4 अनुपपत्ति: Inconclusive reasoning, absence of reasonable grounds. cp. अर्थापत्ति: (अर्थस्य अनुक्तार्थस्य आपत्तिः) an inference from circumstances, a presumption (Apte.)

daughters the daughters' son has the right of succession to the property invariably in the texts and so after the daughters the inconclusiveness in the form of a conflict with other texts as also in the form of the issue of the daughter could be indicative, by implication, of the daughter and the daughters' son only and not of the father ; the inconclusiveness exhausting itself by that much. The exhaustion, moreover, in the text of **Manu** and other texts, of the father as immediately following the daughter's son is uncertain. Therefore by as much in the intended sense the inconclusiveness becomes exhausted, so much only is indicated by the word son by implication, and there is no deduction of the father after the daughter's son.

As for the text of **Kâtyâyana** viz. " When one separated dies, in the absence of sons, the father shall take the property ; or the brother, or the mother, or his father's mother, in the order, " here also the use of the word (*Wá*) ' or ' is not indicative of order ; but only as indicating that these mentioned in the text are entitled, and thus indicative of the right only. In a thing which is self-formed such as what is called an owner, there being no (scope for) option, words like (*wá*) ' or ' have the sense of 'even" (*api*), and not as has been stated by others, that the words (*wá*) 'or' are used in the sense of the absence of one prior and another prior thereof ; as the word (*wá*) 'or' not used by the learned in the sense of an absence, while it is used in the sense of (*api*) 'even'.

The word *Atha* also which is indicative of nearness does not convey the right of succession of the paternal grandmother immediately after the mother, as the sentence does not indicate order as has been explained (above). Therefore let it convey her right of succession immediately after the brother's son without interruption. Still the expression 'in order ' without detriment to its own sense but by regard to the latter part of the text of the Lord of the Yogis viz. " On failure of the prior, the next in order ", indicates an order which is not opposed to what is stated there, and not the order standing in its own sentence. Here, the expression 'in order' having been stated generally, and the expression " on failure of the prior " having been used by the Lord of the Yogis in a particular sense, a particular rule modifies a general one, and therefore what others have said is something, and the exposition in the Mitâksharâ alone is more proper. Thus everything is in its right place.

Thus having shown the right of the paternal grandmother to succeed to the property after the brother's son as more proper, the Author

points out by a discussion the order after that, **Tatra cha pitrsantânâbhâva iti** ( p. 96. l. 22.) *Among these, moreover, on failure of the father's line &c.* ( p. 255. l. 10 ). 'The father's line' is as far as the brother and his son. **Janmanâmajñânâvadkhâ weti** ( p. 96. l. 26. ) *or as far as the limits of knowledge as to birth and name extend* &c. ( p. 256. l. 5. ) i. e. it comes after the *Sapindas*. The meaning is that thereafter after seven generations as far as the birth and the name are known to that extent the term *Samânodaka* applies.

**Gotrajâbhâve bandhavo dhanabhâja iti** ( p. 97. l. 1. ) *On failure of the Gotrajas the bandhus succeed to the estate &c.* ( p. 256. l. 13. ) i. e. of the paternal grandmother, the paternal grandfather, the paternal uncle and his sons ; the paternal great-grandmother, the paternal great-grandfather, the paternal grandfather's brother and his sons ; the mother of the paternal great-grandfather, the father of the paternal great-grandfather, the paternal great-grandfather's brother and his sons; the grandmother of the paternal great-grandfather, the grandfather of the paternal great-grandfather, paternal great-grandfather's uncle and his son; the great-grandmother of the paternal great-grandfather, the great-grandfather of the paternal great-grand-father, the paternal great-grandfather's great-grandfather's brother and his sons—and in the same way among the *Samânodakas* also in the absence of these. This is the meaning.

**Brâhmaṇârthasya tannâsa iti** ( p. 97. l. 14. ) *For the wealth of a Brâhmaṇa on his demise &c.* ( p. 258. l. 15.) It has been generally pointed out that if there be no heir to the wealth of a *Brâhmaṇa*, then that should be given to a *Brâhmana* only. (To a question ) under what circumstances ? (the answer) by implication, 'on his demise' i. e. of him the owner *Brâhmaṇa*, the demise occurring. This is the order (of words.) Or, *Tad*, may be taken as a separate word.

**Sarvâbhave harennṛpa iti** ( p. 97. l. 17. ) *on failure of all, the King may take.* ( p. 258. l. 24. ) 'on failure of all' i. e. in the absence of all including as far as the co-student.

---

## Yâjñavalkya Verse 137.

**Naishṭhikasya dhanaṃ tadapawâdeneti** ( p. 97. l. 23. ) *The money of a professed student as an exception &c.* ( p. 260. ll. 67. ) i. e. as an exception to the succession of the mother and the rest. **Sachhiṣhya iti** ( l. 24. ) *a virtuous pupil &c.* ( l. 8. ) virtuousness is the characteristic of the pupil. Therefore, the preceptor, the spiritual brother and asso-

ciate in holiness also (when) virtuous, succeed to the property. So the Author says: **Durvṛttasyâchâryâderapi iti** (p. 97. l. 25.). *Of one whose conduct is bad, even the preceptor &c.* (p. 260 ll. 10–11.)

PAGE 75*

With this very object the sage **Yâjñavalkya** in the text " the preceptor, the virtuous pupil, the spritual pupil, and associate in holiness" with a view to indicate connection, has enumerated the expression ' a virtuous pupil ' in the middle. Or by the expression 'a virtuous pupil ' is not mentioned an absence of viciousness, but on the other hand is expressed one who is competent to take lessons regarding the knowledge of the Supreme Spirit.

It may be said that the preceptor and all others also who are badly behaved having been excluded without discrimination it would be improper to stress the unequal behaviour of the pupil alone, so the Author says: **Sachhiṣhyaḥ punarityâdinâ bhâgânarhatwâdityantena** (p. 97 l. 24–25). Beginning with *a virtuous pupil, however &c.* (p. 26. l. 7.) and ending with *is unworthy of inheritance &c.* (l. 10.) **Pratipanno bhrâtâ** (p. 97 l. 26.) *is engaged as a brotherly companion &c.* (p. 260. l. 14.) *i. e.* accepted as brother.

In the absence of the preceptor, the virtuous pupil, the spiritual brother and an associate in holiness, who will take the property of a life-long calibate, an ascetic and a hermit? So the Author says: **Eteṣhâmâchâryâdînâmabhâve iti** (p. 97 l. 27.) *In the absence of these viz: the preceptor and the rest &c.* (p. 260 l. 18.)

**Yogasambhârabhedâmscheti** (p. 98 l. 1) *requisites for his austerities &c.* (p. 261 l. 13). The meaning is that books treating of the *yoga* and such other things.

---

## Yâjñavalkya Verse 138.

With a view to explain the origin of the word "re-united" the Author states the meaning of the word "re-united", **Vibhaktam dhanam-iti** (p. 98 l. 5) *effects which had been divided &c.* (p. 262 l. 1).

The Author expounds the original text, **Tasya sanṣrṣhtina ityâdina** (l. 7) **sanṣhtirevâpaharet gṛhṇîyât na patnyâdirityantena** (l. 9) Beginning with *of such a re-united &c.* (p. 262 l. 7) and ending with *the re-united parcener alone shall take the inheritance and not the widow or any other heirs* (p. 262 ll. 11-12). From the remaining portion of the above sentence viz "and none other shall take the inheritance" taking out the word "shall take", the Author completes this sentence:

**Apaharet gṛhṇīyâditi** (p. 98 l. 9) shall take *i. e.* appropriate. By the word "of such" the Author completes the compound sentence stated before. Here the expression "of the deceased" is either the sense or deducible from the context. With a view to remove a conflict with another text by its meaning the Author completes the import of the sentence : **Vibbhāgakâle avijñātagarbhâyâmiti** ( p. 98 l. 8). *Where the pregnancy was unknown at the time of the distribution &c.* (p. 262 l. 10).

This is the meaning intended here : When three or four brothers or others become re-united, then from among them if one brother die after depositing a fœetus in his wife, and of the surviving re-united coparceners on account of their being many or for want of unanimity partition has become necessary—for there would be no partition where there is one, or if there be unanimity—at the time of such partition, by reason of the conception not being manifest, if the fœtus was not known, but a partition had been made and a son was born in course of time, then to him, his father's share should be given. In his absence, taking into account the re-united individuals and determining the share, the re-united parceners should take. Here the singular number used is for the word "re-united" with the object of stating the law relating thereto. Otherwise, when there is only one individual there would be no partition.

The Author points out the meaning of the sentence which is obtainable in pursuance of the prior sentence : **Ataḥ sodarasya samsṛshtineti** ( p. 98. l. 13. ) *Therefore...of an uterine re-united &c.* (p.262. l.99.) **Jâtasya sutasya** ( p. 98. l. 14. ) *to a son born &c.* ( p. 262. l. 20. ) similarly as explained before viz. born afterwards of one whose conception had not been manifest.

It has been mentioned that the expression "of an uterine brother, his uterine brother" is an exception to the clause "of a re-united, the re-united". The Author makes that clear in substance: **Evancha sodarâsodarasaṃsarga iti** ( p. 98. l. 14. ) *Thus if there be uterine and non-uterine brothers together* ( p. 262. l. 22. )

---

## Yâjñavalkya Verse 139.

**Kasya dhanagrahaṇamiti vivakṣhâyâmiti** ( p. 98. l. 16. ) *To an inquiry who shall take the succession &c.* ( p. 262. l. 26. ) at the appearance i. e. when the knowledge had arisen. i. e. to say when there was a desire to know.

The first part of the second half of the original text is to be taken at the beginning of the sentence ; so the Author says : **Anyodaryaḥ sâpatno bhrâteti** ( p. 98. l. 20. ) *a half-brother i. e. a brother born of a rival wife &c.* ( p. 263. ll. 6–7. ) Here it should be taken as following the word "to the re-united". Therefore the meaning is, the property of a re-united.

The Author points out the substance of the conclusion which was obtained affirmatively by the positive rule regarding the succession to the property of a re-united half-brother as also negatively by the rule which prohibits succession to an un-reunited half-brother: **Anenânwaya wyatirekâbhyāmiti** (p. 98 l. 21.) *Thus by the test of affirmative and negative reasoning &c.* (p. 263 l. 9). The expression "not re-united" has connection with both like the crow's[1] eye. Therefore there would be another sentence ending with "a not re-united also shall take", so the Author says : **Asaṃsṛshṭīpyetaduttareṇâpîti** (l. 11.) *The term not re-united......also with what follows &c.* (p. 263 l. 11). The Author states the same sentence ; **Ataschâsaṃsṛshṭyapîti** (p. 98 l. 22.) *and hence, even one who was not re-united &c.* (p. 263 l. 12). It is only in his

PAGE 76* capacity as re-united that a re-united (succeeds). This is what is deduced.

The Author connects the term 'a re-united' occurring in the latter part, as the remaining portion of the prior clause : **Kosâviti** (p. 98 l. 7) *Who is he &c.* (p. 263 l. 13). The Author states the meaning of the terms re-united mentioned before : **Saṃsṛshṭa ekodarasaṃarṣhṭa iti** (p. 98 l. 23). *'One united' i. e. one united by the identity of the womb &c.* (p. 263 l. 14). i. e. enclosed in the womb of one mother. This is indicative of the father also by an extension. Under the text of the **Śruti** "The husband enters into the wife in the form of a fœtus ; thus the mother &c." the wife having also been stated to be a mother, the father, even though not re-united shall take the estate of a son, thus the son also un-reunited, of the father, or brother who is dead. This is the meaning in substance. By the use of the term 're-united', the Author brings out this very meaning : **Sodara itī yâvaditi** (p. 98 l. 24) *in other words, an uterine brother* (p. 263 l. 15).

He states the meaning in substance of the clause "One un-re-united may also take" : **Anena sodarasyeti** (p. 98 l. 24). *By this...... of an uterine brother &c.* (p. 263. ll. 15–17). By the same method as stated above, the term "re-united" in the former clause goes by context

---

[1] काकाक्षिगोलकन्यायः is here referred to.

with the latter term "not the son of a different mother" so the Author says: **Saṃsṛṣhṭa ityuttareṇâpîti** (l. 24). *The term 'united' likewise .........with what follows &c.* (p. 263 l. 18).

The Author states the intended meaning of the term 'united' as a part of the sentence which follows, **Tatra cha saṃsṛṣhṭa iti** (l. 24). *And here the term 'united' &c.* (p. 263 l. 19).

With a view to supplement the term "not the son of a different mother" by adding 'only' (*eva*), the Author takes it up as a quotation word: **Nânyamâtṛja iti** (l. 24) *not the son born of a different mother &c.* (p. 263 l. 23). Of the sentence formed by adding the term 'only' (*eva*) as a supplement to the clause "the united, not being the son of a different mother", the Author thus points out the method of exposition **Saṃsṛṣhṭyapyanyamâtṛja iti** (l. 25). *Although re-united, one born of a different mother...... exclusively &c.* (p. 263 ll. 23-24).

The Author states the meaning in substance of the entire latter half viz. "Not re-united may even take &c". **Evanchâsamsṛṣhṭyapi cheti** (p. 95 l. 26). *Thus......though not re-united &c.* (p. 263 l. 26). There the Author states the reason: **Dwayorapîti** (l. 27) *of both even &c.* (p. 264 l. 6). The meaning is, that the reason for the succession of a non-uterine brother is his being re-united, while of an uterine brother, his uterine relationship itself is the cause, and not reunion.

**Saṃsṛṣhṭivibhâgam prakramyeti** (l. 29) *premising partition among re-united parceners* (p. 24 l. 8). The context should be understood as beginning with the expression "living together &c."

The Author explains the text of **Manu** "Of whom the eldest or the youngest &c." **Yeṣhâm bhrâtṛṇâmityâdinâ**: Beginning with *among the brothers &c.* (p. 264 l. 15). By reason of the use in the beginning and the end of the eldest and the youngest, by a parity of reasoning, the middlemost also is intented to be expressed, so the Author says **Madhyamo weti** (p. 99 l. 1.) *or the middle-most &c.* (p. 264 l. 16).

The Author points out the causes for a deprivation of a share **Âsramântaraparigraheṇeti** (p. 99 l. 2) *on account of his entrance into another order &c.* (p. 264 ll. 19-20). The Author states the meaning in substance of this very text of **Manu**: **Ataḥ pṛthaguddharaṇîya iti** (p. 99 l. 3.) *But shall be set apart &c.* (l. 21).

The Author introduces the text of **Manu** "The uterine brothers shall divide &c" with a view to explain it: **Tasyodhṛtasyeti** (l. 3) *Of the share so set apart &c.* (p. 264 l. 23). From the use of the term

're-united, in the clause "and those brothers also who had become re-united", it appears that here the uterine brothers are comtemplated as un-reunited. And hence the Author expounds the first half by context with the term 'un-reunited' got at. from the sense : **Tamuddhṛtabhâgamti** (p. 99 l. 4). *That share so set apart* (p. 264 l. 24). **Sanâbhayo bhaginyaścheti** (p. 99 l. 6). *And also the uterine sisters &c.* (p. 264 l. 30). i. e. the sisters born from the same womb.

## Yâjñavalkya Verses 140, 141, & 142.

**Putrapatnyâdisamsṛshṭinâmiti** (p. 99 l. 8.) *respecting the son, the widow, and other heirs...the re-united parceners* &c. (p. 264 ll. 35-36). By the word son is included, by implication, the son's son also; by the term *Âdi* 'and others' the daughter and the rest. The compound is to be dissolved as the sons, and the group beginning with the wife and others as well as the re-united. **Vibhakteshu suto jâto sawarṇâyâm vibhâgabhâgityasya sâmânyanyâyatwâditi** (p. 99 l. 25). *By a parity of reasoning with the rule (in the text) "when the sons have been separated, a son who is afterwards born of a woman equal in class, shares the distribution"* (p. 267 ll. 19-21). A son born after partition means also the birth of a son to oneself, thus the difference between the attribute and those possessing it is only as to the origin, and there is thus no other difference and thus the difference being only as regards the subject, there is parity of reasoning. The meaning is, that there being thus the difference only as to the subject, there is the parity of reasoning.

**Uktadoshadushṭânâmiti** (p. 99 l. 26). *Disqualified for...defects specified &c.* (p. 268 l. 2) i. e. by the defects of impotency and the like.

## Yâjñavalkya Verse 143.

**Agnâvadhikṛtyeti** (p. 100 l. 14.) *before the nuptial fire &c.* (p. 271 l. 4.) i. e. near the fire. **Adhivedananimittamiti** (l. 15) *on account of a supercession &c.* (p. 271 l. 6). Supercession means while the lawful wife is existing performing another marriage merely for pleasure.

Some describe the word *stridhana* as hot having a literal import just as is the case with *Aśwakarṇa*[1] and restrict it to the six kinds

1 From the point of view of their import words fall under three classes, रूढ current, यौगिक literal or etymological, and योगरूढ a combination of the two. The word स्त्रीधन if taken in the sense as some writers believe it to be current would restrict its scope from a literal interpretation of that term, which would extend it to all kinds of properties in whatever way obtained by a woman. The illustration of अश्वकर्ण given above would restrict it to the supposed current meaning. अश्वकर्ण literally means the of a horse. But in current usage it is used to indicate a tree and objects other than a horse's ear.

enumerated by **Manu** in the text "are denominated the six-fold property of a woman". That is not correct. Because thereby there would be a conflict with other texts, a conflict with the usage of the good, and a custom (to that effect) not having gained ground, the literal meaning would preponderate over the one in vogue, the derivative sense alone is proper ; with this object in view the Author says : **Stridhanaśâbdascha yaugika iti** ( p. 100 l. 17 ). *The word stridhana conforms in its import with its etymology &c.* (p. 274 ll. 12–13).

PAGE 77*

## Yâjñavalkaya Verse 145.

The Author expounds the clause in the original text viz. "will go to her daughters, if she leave progeny" &c. **Sarveṣhwapi vivâheṣhu iti** (p. 101 l. 11.) *Indeed in all forms of marriage &c.* (p. 275 l. 11). **Duhitrduhitara iti** (l. 12) *daughter's daughters &c.* (p. 275 l. 14) i. e. the daughters of the daughter. **Sodaryâṇâmûrdhwam mâturiti** (p. 101 l. 18.) *to the uterine brothers after the mother* (p. 276 l. 15) i. e. in the absence of the mother, the uterine brothers shall take.

When the daughters are many, and these are not living, and their daughter's also, one has one, another two, and another three, and there is unevenness, then how will the shares of the daughters' daughters be determined in the property of the maternal grandmother ? Anticipating this question, the Author reminds of the same rule as has been stated about the son's sons in regard to the property of the paternal grandfather : **Tâsâm bhinnamâtṛkâṇâm iti** ( p. 101 l. 19 ) *of these... by different mothers &c.* (p. 277 l. 6). **Pratimâtṛto wâ swawargeṇa** ( l. 20 ). *Or according to the mothers, let the special shares...in each class* (p. 277 ll. 6–7). The meaning of this : In the class of daughter's daughters, according to the mother of each i. e. for each mother separately, the particular share for her mothher shall be made, and not by regard individually (to each).

**Mâturduhitarobhâva iti** (l. 24)...*mother's ; or on failure of daughters &c.* (p. 277 l. 16). The meaning of this : After the mother, her property, her daughter should take. Failing these, among her issue i.e. the daughter's[1] issue, first it goes to the daughters of daughters.

1 This is an important interpretation in the matter of the succession to a woman's estate. This point is further made clear by Smṛtichandrikâ. See p. 286. ll. 1–3.

"Failing these her issue"—by this statement, it becomes of the daughters[1] of daughters who are the female issue, otherwise the statement of the term 'issue' would be meaningless.

It may be said the word (*tad*) 'it' relates to the nearest word and therefore in the order of words as stated the word daughters alone being nearest, the daughter's issue i. e. progeny is alone deduced ; not the daughter's son who are the children of the daughters ; so the Author says: **Tachhabdeneti** ( p. 101 l. 24 ). *For the pronoun it &c.* (p. 277 l. 17). This is here the idea: There being the nearness of the word as also of the meaning, it is proper that it should refer to the daughters actually.

The Author expounds the text of **Manu** "When the mother is dead &c": **Mâtṛkaṃ ṛktham iti** (p.101l.17). *The maternal estate &c.* (p.278l.7).

It may be said, indeed, let the order (of words) be as referring jointly viz. that uterine brothers and uterine sisters together shall take, why should the order be separated ? Anticipating this the Author refutes it : **Na punaḥ sahodarâ iti** (p. 101 l. 28) *and not that uterine brothers &c.* (p. 278 l. 19 ).

The Author states a reason here : **Itaretaryogasyeti** (l. 19) *abridged form of the conjunct compound &c.*(l. 10) This is the import :— The conjunctive 'and' *(cha)*[2] is used in four senses : Community[3] (of reference), collateralness[4] (of reference), mutual[5] conjunction, and aggregation.[6] The Dwandva[2] comuound is used to express a relation (of

---

1 Here there is a mistake in the print. At p. 77. l. 13. read दौहित्रीणां for दौहित्राणां.

2 चार्थे द्वंद्वः The full text of the Siddhānta Kaumudi on this will be of much use in following the passage and the notes. It runs thus;—अनेकं सुबन्तं चार्थे वर्तमानं वा समस्यन्ते स द्वंद्वः। समुच्चयान्वाचयेतरेतरयोगसमाहाराश्चार्थाः । &c.

3 समुच्चयः—which has been thus explained ! परस्परनिरपेक्षस्यानेकस्य एकास्मिन्नन्वयः समुच्चयः. When two or more independent words not related with each other, are grammatically in the same case, their conjunction will be समुच्चय ; e. g. ईश्वरं गुरुं च यजस्व. Here there can be no compounding as there is no *Sâmarthya* न समासोऽसामर्थ्यात्. Two things here have been connected by one (क्रिया) verb.

4 अन्वाचयः—अन्यतरस्यानुषंगिकेनान्वाचयः—when one action is used as collateral to a principal action, it gives rise to the union called अन्वाचय e. g. भिक्षामट गां चानय. Here there is no compounding, owing to want of *sâmarthya i. e.* here want of *Ekarthībhâva.*

5 इतरेतरयोगः—मिलितानामन्वयः e. g. धवखादिरपलाशाः

6 समाहारः—समूहः. In these two latter kinds, as there is mutual combination there is compounding. The distinction between the two has been thus stated: इतरेतरयोगे साहित्यं विशेषणं द्रव्यं तु विशेष्यं । समाहारे तु साहित्यं प्रधानं द्रव्यं विशेषणम् ।. In the इतरेतर each member is considered separately, while in the समाहार all are exclusively considered as in संज्ञापरिभाषम्. See note 6 on. 278. of the Mitākshara.

several words) expressible by 'and'. There, the senses of community and collatteralness being incompetent, a *Dwandva* compund does not occur. The compound occurs only in the cases of mutual conjunction and aggregation. In the case where it is taken as expressing mutual conjunction, in the text of **Manu**[1] a division of the brother and the sister is inferrable by a pooling of the effects and then a division. The determination of the mutual conjunction is either by making a *dwandwa* compound or through the uni-residual compound as is instanced in *Dhava-Khadira-Palâśāḥ*.[2] Similarly if the compound word 'brothers and sisters' be taken as a *uni-residual*[3] compound of similar words, it would be (understood) as (in the cases of) the trees,[4] or as (in the case of) the issue[5] having a similar import. Or it be taken as a *uni-residual* compound of dissimilar words under the rule[6] of grammar "The words *bhrāta* and *putra* only are retained respectively when used with the words *swasṛ* and *duhitṛ* in a uni-residual compound of (the words) *bhrâtṛ* and *swasṛ* being made, only the term 'two brothers' (remains), and on a uni-residual compound being made of (the words) *putra* and *duhitṛ*, only the term 'two sons' (remains). That determination is made when either of these occur. But that is not so. Therefore it is not the case of a mutually conjunctive compound.

Moreover, the term *(cha)* 'also' may also be explained in another way, and so there is no inference that the brother and sister take by a division after pooling together, so the Author says: **Vibhâgakartṛtwânwayenâpîti** (p. 101 l. 29). *even......with reference to the person making the partition &c.* (p. 278 l. 13). Or even without a uni-residual *dwandwa* compound, as a result of the (use of the) word *cha*, let there also be a mutual conjunction" so the Author says: **Vibhâgakartṛtvânwanyenâpîti.** Or, the Author gives an illustration here: **Yathâ Devadatta iti** (p. 101 l. 30). *As......Devadatta*[7] *&c.* (p. 278 l. 14).

---

1 viz. IX. 192. Here one entire line has been omitted to be printed after the words मनुवचने viz भ्रातृभगिन्योः सम्भूय विभागप्रतीतिः। इतरेतरयोगप्रातितिश्च द्वन्द्वेन कृतेनैकशेषद्वारा वा। यथा धवखदिरपलाशा इति तथा भ्रातृभगिन्य.

2 Names of trees stated as illustration of the इतरेतर compound. धव is the *Mimosea*, and खदिर the *Grislea* or *Acacia Catechu*, and the पलाश is the *Butea Fondosa*.

3 सजातीयैकशेषः here e. g. indicative of अपत्य.

4 वृक्षाः ; there is a mistake in the print; for रक्षं read वृक्षाः

5 For before सामानार्थानामिति in l. 22. p. 77. read अपत्यानीति ।

6 This is stated in Pâṇini at I. 2. 68. Before भ्रातृपुत्रौ in l. 22. read यद्वा विजातीयैकशेषे.

7 This example is with reference to the person *making* a partition विभागकर्ई.

**Striyâstu yadbhavedwitam iti** (p. 102 l. 1). *Whatever property of a woman may exist &c.* (p. 279 l. 4). Here by the use of the expression 'of a woman', 'by the father' and also 'the daughter of a Brâhmaṇi co-wife' what has already been stated has been accepted. **Anapatyavaiṣyâdhanam kṣhatriyā kanyâ grhṇâtiti** (p. 102 l. 3). *The daughter of a Kṣhatriyā co-wife takes the goods of a childless Vaiśyā co-wife* (p. 273 ll. 8–9). This rule should be observed in the case of the property of a *Śudrā* co-wife also.

**Ṛkthabhâja ṛṇam pratikuryuriti** (p. 102 l. 4). *They who share the inheritance must pay the debt* &c. (p. 279 l. 11.). Having stated that those who discharge the debt shall take the inheritance, taking the two texts into consideration, the son's son being of the category, in the absence of the son, the son's son shall take the property of the paternal grand-mother. This is the meaning.

## Yâjñavalkya Verse 146.

PAGE 76. **Drawyânubandhâdyanusâreṇeti** (p.102 l. 8). *By regard to the amount of the property or the magnitude of the offence &c.* (p. 280 l. 8). *Anubandha*[1]—Offence i. e. the cause of the mischief. For according to the lexicon of **Amara**[2]. "That which causes the mischief is an offence."

**Ubhayorâtmanaḥ Kanyâdâtuscheti** (p. 100 l. 15) *of both i. e. of himself and of the person who offered the bride &c.* (p. 80 ll.25-26). This is the import : The amount of money spent by those who had prepared themselves for the marriage viz. the person offering the bride and the one accepting her, such as her father and the like others, should be taken from the bride's money and the balance should be given to the bridegroom.

**Tadabhâve mâtūstadabhâve pituriti** (p. 102 l. 18). On failure of them, it shall belong to the mother ; and in her absence, to the father. The meaning is that in the absence of the uterine brothers, it becomes (the property) of the mother, and in her absence, of the father.

## Yâjñawalkya Verse 148.

A second marriage itself is the cause for the payment of money to the first lawfully married wife, so the Author says : **Adhivedananimittam dhanamiti** (p. 103 l. 4) *on account of supercession. An amouut* &c. (p. 282 ll.19–20).

1 I. 3. 18. An anubandha is a connection. Here it means the cause whether near or remote which causes the rupture.

2 III. 3. 98.

How much is that ? Anticipating such an inquiry, the Author says: **Samam yâvadadhivedanârthamiti** (p. 103 l. 4.) *equal to what......on the second marriage &c.* (p. 282. ll. 20–21.)

Here the word 'half' (*ardham*) in the original text is not in the neuter gender, so that it would be expressive of an equal share, but it is in the masculine gender. And therefore it is expressive of a portion. With this object in view, the author says, **Ardhaśabdaschâtreti** (p. 103 l 6). *Here, however, the word 'half' &c.* (p. 283 l. 3,) vide the lexicon of **Amara**[1] (according to which) "when used in the masculine its form is *Ardhaḥ* denoting a portion ; in the neuter, it is *Ardham* meaning an equal (half). &c."

End of the Chapter on the **Distribution of Inheritance.**

---

## Chapter IX

### BOUNDARY DISPUTES

**Janapadasīmeti** ( p. 103. l. 26) *Boundary of a country &c.* ( p. 285. l. 18.). *Janapada* means a country. **Sâ cha yathâsambhavamiti** (p. 103 l. 27 ). *This ... according to circumstances &c.* ( p. 283. l. 20 ). Not necessarily is a boundary only that which is accompanied by the five characteristics about to be mentioned, but somewhere it has one, somewhere two, somewhere many, according as they are likely to be available at a particular place—without transgressing these. **Dhwajinī vṛkshādilakshiteti** ( p. 103. l. 29 ). *One having a flag-mark i. e. marked by trees &c.* **Matsyinī salilawatī** (l. 29). *One marked by the fish i. e. one with water in it* &c. ( p. 285. l. 26 ). **Naidhânî nikhâtatushângārādimatī cha** ( p. 104. l. 1 ). *Known by a deposit* i. e. *one containing the fire of the husk deposited after digging &c.* ( p. 285. l. 28 ). For says **Vyāsa.**

"Where on the boundary of two villages tall trees are standing rising high and looking flag-like, that (boundary) is known as *Dhwajini*, or boundary with a flag-mark.

"Where there is a river flowing at random with plenty of water containing fish and tortoise and having a perpetual stream, that boundary is considered as *matsyini*, or one marked by the fish.

"That boundary which is to be marked by fish, husk, skulls, jars, and receptacles is known as the *Naidhânī* or boundary known by deposits."

---

1 I. 3. 16.

**Arthipratyarthiparasparasampratipattinirmiteti** (p. 104. l. 2.) *created by the mutual agreement of the plaintiff and the defendant &c.* (p. 285 l. 36.) By reason of the truthfulness of the plaintiff and the defendant, and the utmost mutual confidence, in accordance with the mental impression of each, determined by a mere oral declaration viz. 'this is my land' and 'this is my land'. Here the position of a plaintiff or a defendant is on account of neighbourhood,[1] being in that position and not on account of being oppressed by hatred.

**Jñâtṛchinhâbhâva iti** (p. 4 l. 13.) *in the absence of signs of recognition* &c. (p. 285 l. 33) *Jñâtāro* 'persons recognizing' i. e. the witnesses, neighbours and the like. 'Signs' such as trees and the like. Men recognizing as well as 'signs'; in the absence of these. This is the meaning.

While commenting on the text of **Kātyāyana** and pointing out the six varieties of disputes in suits relating to land, there the Author describes the first variety **mamâtra panchanivartanāyā iti** (p. 104 l. 6) *my land was five nivartanas &c.* (p. 286. l. 7). The Author mentions the second, **Panchanivartaneti** ( p. 7 ) *five nivartanas &c.* (p. 286 l. 10) The Author states the third and the fourth: **Panchanivartano mamānśa iti** ( ll. 7-8. ) *My share measured five nivartanas &c.* ( l. 12 ). Here with a view to test the intelligence of the Teacher on an assertion being made by 'Here my share is five nivartanas' without difficulty setting up the third variety by saying that it is not that your share is five nivartanas, the next variety itself has been brought out. Hence the combined conclusion viz. 'dispute as to the existence or absolute non-existence.'

PAGE 79 * The Author mentions the fifth and the sixth varieties **Madīyâ bhūḥ prâgiti** ( p. 104. l. 8. ) *My land ...... prior &c.* ( p. 286. ll. 15-16 ). Whether this is the boundary or this ; or my share is five nivartanas, is one variety. This is the boundary, or this is the boundary, is the fifth variety ; this is the limit, or this, is the sixth. Intending this very thing the Author says : **Iyaṃ maryâdeyam weti simâviwâda iti** (p. 104. ll. 9-10). *When there is a dispute whether this is the boundary or that is the limit, it is a dispute regarding boundary* ( p. 280. ll. 19-20 ).

The distinction between the boundary and the limit will be pointed out in[2] (the text) 'for breaking up the boundary' &c. and in a dispute as to the 'existence or non-existence', when both sides are admitted, the limit and boundary are regarded as one, and the suit proceeds. If re-

1. प्रातिवश्यत्वेन is a better rading than नातिविशेष्यत्वेन.
2 Yâjn. II. 155.

garded here as separate, they would be one before. Or, excess, deficiency, existence, non-existence, possession without any prior occupation, and a boundary, these six causes, sometimes separately, sometimes jointly ; thus the Author concludes what had been incidentally indicated before : **Ṣhaṭ prakâra eveti** (p. 104. l. 10) *of six varieties* &c. (p. 286 l. 21). **Śrutyarthâbhyâmiti** ( p. 104 l. 11.) *determined either under an express or implied text* ( p. 286 ll. 22–23.). The distinction is that where there is actually a dispute as to the limit, then express, and elsewhere implied.

**Tatsaṃsaktâdyupalaskṣhaṇârthamityuktam** (p. 104. l. 104). *indicative by implication of those contiguous to them &c.* (p. 286 ll. 32–33 ). Here the Author mentions those included in the term 'and others' : **Uktancha Kâtyâyanena: Saṃsaktakâstu** (p. 104. l. 15.) *Kâtyâyana has also said, those who are closely contiguous &c.* (p. 286 ll. 33–34.) The meaning of this : The neighbours on the boundary are known as closely contiguous. So, those placed beyond these being contiguous to these, are styled *Uttarâḥ* ; hence also as this is their designation, it is not to be taken as a pronoun. Similarly, those situated further on being contiguous to those immediately contiguous are described as *Padmâkârâ. The Sâmantas* and the two others also are indicated by two names. This is the meaning.

**Tatkâryaṃtadguṇânvitairiti** ( p. 104 l. 18 ). *Anything being brought about—being endowed with the qualities &c.* (p. 286 l. 40 and p 287 l. 1.). "Anything' i. e. in the form of deciding disputes about boundaries &c. or the like. 'Endowed with the qualities' i. e. qualities such as expert knowledge regarding decisions about boundaries &c. **Upaṣravaṇasambhogeti** (p. 104 l. 19) *by tradition any act of peaceable possession* (p. 287 l. 7.). Clear statements by the assessors or traditions to the effect 'Here[1] is wealth', and evidence in the form of continuous peaceable possession ; special episodes relating to these ; marked by this. This is the meaning.

**Vyâdhân śâkunikâniti** (p. 104 l. 22) *hunters, fowlers &c.* (p. 287 l. 13) *Vyâdhân* i. e. Hunters ; 'Fowlers'—i. e. those earning a livelihood by killing birds. 'Fishermen'—those who earn a subsistence by digging a tank &c. 'Root-diggers'—Those who find out a living by digging up the roots of trees &c. 'Snake-catchers', i. e. those who catch snakes ; jugglers. 'Gleaners' i. e. who subsist on gleaning ears of corn. 'Foresters' i. e. roaming about the woods for fruit, flowers &c.

**Gulmân veṇûṇscha vividhâniti** (p 104. l. 27 ). *Shrubs and bamboos of different kinds &c.* (p. 287. l. 24. ) 'Shrubs' i. e. stemless

1 अत्र वसुरिति v. l. अत्रेयं स्थितिरिति. Here the position is this.

clumps of trees. Vide the **Amara**[1] "Stemless are clumps of trees or grass". Grass or a creeper[2]. **Kupyagulmâścheti**[3] (l. 28) *thickets of the Kupyaka* i. e. thickets relating to the base metals. A base metal is itself one relating to it. *Kupya* means any base metal such as copper &c. excepting gold and silver. According to **Amara**[4] "'*Hema*' and '*rûpya*' are used for gold and silver whether refined or gross; *Kupya* is that which is other than these two." By reason of removing the dross of the *Kupyaka*, and by constant contact with it, and rubbing against it, it has been described as relating to it. And for this reason they have been indicated separately from clumps which are more useful. That is the distinction. **Tadâgânyudapânânîti** (p. 104 l. 29) *tanks, drinking reservoirs* &c. (p. 287 l. 27.). 'Drinking reservoirs' i. e. wells vide **Amara**[5] 'a well, a drinking reservoir used in the (neuter or) masculine gender also". *Wāpis* or wells, i. e. wells built up in stones &c. vide **Amara**[6] '*Wāpi*' is the same as *Dīrghikâ*." 'Fountains' such as springs &c.

## Yājñavalkya Verse 152.

**Sâmantâ wâ samagrâmâ iti** ( p. 105. l. 27 ). *Men of the neighouring villages or of the same village* &c. (p. 288. l. 12). "Of the same village" is adjectival of the '*Sâmantas*' and not a separate name such as the contiguous neighbours of the village &c. The meaning of 'or' has been made clear in the book itself.

**Swârthasiddhau pradushteshûiti** (p. 105 l. 14). *suspected to be corrupt on account of personal interests &c.* ( p. 289. ll. 6–5. ) i. e. when the 'Sâmantas' are under a cloud.

By reason of the plural number used in '**Nayeyuḥ**'—*they shall determine*—one or two cannot determine a boundary, so the Author says **Nayeyuriti bahuwachanamiti** ( p. 105 l. 22.) *The plural number in the expression 'they should settle' &c.*

With a view to explain the text of **Nārada** viz. "has been carried off by a (down-flowing) stream and thus the boundary marks have been uprooted or destroyed" the Author states the compound of this expression: **Nimnagâyâ nadyâ iti** ( p. 105. l. 28. ) *a down-flowing river* &c. (p. 290 l. 11.)

---

1 II. 4. 9.

2 जङ्घा is the upper part of a leg. It is used here as a creeper, perhaps on account of its derivation. जघन्यते कुटिलं गच्छति (see *Râmâśrami on Amara*).

3 कुंजगुल्माश्च is the reading in the Mitākshara. Bālambhaṭṭi has the same reading as here.

4 II. 9. 91. 5 I. 10. 26. 6 I. 10. 28.

PAGE 80

In this text, three ways have been stated. The Author analyses one of these viz. that indicated by the clause 'according to the inference to be drawn from the spot' and points out its characteristics : **Tatra tatpradeṣânumānâditi** (p. 105. l. 30.) *There according to the infereece to be drawn on the spot. &c.* (p. 290 l. 14). The Author analyses and expounds the nature of the way indicated by the clause 'according to measurements' **Grâmâdârabhyeti** (l. 30) *Commencing from the village &c.* ( p. 290. l. 17. ). The Author explains the clause 'according to the traces of pessession' : **Pratyarthisamakṣhamiti** ( l. 31. ) *with the knowledge of the opponent &c.* ( p. 290 l. 20).

**Bṛhaspatinâ Châtra viśeṣho darśita iti** ( p. 106. l. 1 ) *a special rule has, moreover, been laid down by* **Bṛhaspati** *in this connection* ( p. 290. l. 20 ). 'In this connection' i. e. in regard to witnesses, and *Sāmantas* and others in their most natural condition ; Or, in connection with the determination of the boundary. In the expression 'those who know, shall be proper witnesses' the use of the word 'witnesses' is indicative, by an extension, of the *Sâmantas &c.*

**Grâmeyakakulânāntviti** ( p. 106. l. 3. ) *of the Kulas and of the Villagers &c.* (p. 290 l. 29.). The people of a village are the villagers. The meaning is that in the presence of these, and of the *Kulas* as already[1] defined in the expression 'pûga, śreṇi and kulas' as also of the plaintiff and the defendant. Or the assemblages of the people of the village, i. e. the *Kulas.*

---

## Yājñavalkya Verse 153. (1)

It may be asked, the statement 'In case of a falsehood, they should severally be punished' being general, how can it have a reference to the *Sâmantas* only, so the Author says : **Sâmantaviṣhayatâ cheti** (p. 100. l. 16). *refers to the Sâmantas* (p. 291. ll. 27-28.). The meaning is that as other punishments have been laid down in other Smṛtis regarding people other than the *Sâmantas,* it is proper that the punishment stated by the Lord of the Yogis is in regard to the *Sâmantas.*

**Jaghanyâsta iti** (p. 106. l. 21.) *these are sinners &c.* (p. 292. l. 107.) 'siners' i. e. offenders.

The punishment indicated in the expression that this rule of punishment has a reference to (statements made in) ignorance, is the one stated by the **Lord of the Yogis, Manu, Nārada** and others and

---

1 See Āchara 361 and Vyāwahara 30 and the Mitākshara on these.

beginning with the clause 'In the case of a falsefood, they should be severally punished' and that rule. This is the meaning.

The Author states the reason for that : **Bahūnântu gṛhitânâmityâdinâ** (p. 106. l. 26.) beginning with *If of those many assembled together &c.* (p. 292. l. 25.). Here however by the expression 'either through fear or only avarice' its reference to design is indistinct.

---

## Yâjñavalkya Verse 153. (2)

**Yadâ tasyâm bhūmâwiti** (p. 107. l. 5.) *when in the land &c.* (p. 293. l. 16). The meaning is that when in the land under dispute there is a possibility of a greater use for one of the villages, then as much of the land as may be of use, the whole of such land should be given.

**Simâyâmavishahyâyâmiti** (p. 107. l. 7.). *If the boundary cannot be ascertained &c.* (p. 193. l. 19). The meaning of this: In the absence of signs, witnesses, and the like means when it is impossible to demarcate the boundaries, the king knowing the law himself, with an impartial mind, should assign i. e. order out as much portion of the land to a village for which it is likely to be of greater use, for the reason that it is likely to be of greater use.

Under the rule that "An extension always contemplates more." where the contemplation is wider[1] there on account of a cognition of non-resemblance with the subject stated before by reason of the things existing and non-existing of a like nature a doubt arises as to the existence or non-existence of things unlike and it is directed that here also ( it should apply ) as before, that is called an *Atideśa* also. As for instance having ordained the sacrifice to the manes with balls of rice for one who has maintained the consecrated fire, a direction that similarly also for one who has not maintained a consecrated fire is an *Atideśa.*

And it may be said that in the present context, that rule which has been stated in the text "In a dispute about the boundary of a field &c." being extremely similar to gardens &c. there is no necessity of any 'expansion', and so also the text which has been next stated regarding a garden, a warehouse &c. is unnecessary. Anticipating this, the Author says, so be it, still with the object of showing to the pupil that texts exist which lay down a rule, and with a view to further confirm

---

1 This is characteristic of an *Atideśa*, an extension. Jaimini's *Mīmāmsā* devotes practically the latter half to topics admitted by an *Atideśa*. Books VII and VIII give exhaustive rules on particular propositions.

the rule stated before, the Author incorporates these by an express text for other topics although they do not form a separate subject. **Asatyâmapyasadbhâvaśankâyamiti** ( p. 107. l. 9. ) *Even though there is no room for doubting that it is not so &c.* ( p. 293. l. 23, ) That which has it i. e. similar form, is one having it ; an absence of one having it is one not having it ; a doubt regarding it ; even when that did not exist. The compound is to be thus applied.

---

## Yâjñavalkya Verse 154.

Having said that *Āyatana* 'a warehouse' means—a *nivâsa*, a house, the author exhibits the same by a further expansion. **Palâlakûṭâdyarthamiti** ( p. 107. l. 12. ) *for storing husk or straw* &c. ( p. 294. l. 3. )

---

## Yâjñavalkya Verse 155.

**Kṣhetraṃ wâ bhiṣhayâ haranniti** ( p. 107. l. 25. ) *by intimidation usurps a field* &c. (p. 295. l. 1.) 'Intimidation' means fear i. e. causing (fear) to another ; also usurping by intimidation. This is the meaning.

---

## Yâjñavalkya Verse 158.

**Idânīm tasyaivânuprasaktânuprasaktyeti** ( p. 108. l. 18. ) *now... a close bearing in the same context &c.* ( p. 296. ll. 59-30. ) 'In the same' i. e. of the owner of the field. Related to the owner is the field ; a consideration regarding that i. e. the field. Similarly also a close bearing may also be seen elsewhere. **Tam pradâpyâkṛṣhtaśadamiti** —having caused the same uncultivated and unharvested. The order of word is, that which was not cultivated and sown, caused to be restored. The Author expounds the expression not cultivated and harvested : **Tasyâkṛṣhtasya phalam iti**—the produce of that which was unploughed.

End of the Chapter on **Boundary Disputes.**

---

# Chapter X.

PAGE 81.

## DISPUTES BETWEEN OWNERS OF CATTLE AND THEIR HERDSMEN.

## Yājñavalkya Verse 159.

**Jñānapūrne tu paṇasyu pâdau dwau gâmiti** (p. 109. l. 5.) *However by design—two quarters of a paṇa for a cow &c.* (p. 298. ll. 7-9.), For a cow, two quarters i. e. half of a *paṇa*, is the fine. For a buffalo, double i. e. an entire *paṇa* is the fine. For a goat, a sheep, and calves,

however, a fourth part of a *pana* is the fine. This is the meaning. From the excess in the punishment itself it appears that these are intended for acts done with knowledge.

---

## Yâjñavalkya Verse 160. (1)

**Yathoktâddwiguṇo daṇdo veditawya iti** (p. 109. l. 12.) *a fine double that mentioned above should be understood &c.* (p. 298. ll. 22–23.) i. e. when, however, without the knowledge (of the owner), a fine double that mentioned in the text "A female buffalo—eight *mâṣhas*" &c. If however, with the knowledge (of the one) then a fine double of that mentioned in " two quarters of a *paṇa* for a cow &c." This is the distinction to be made. **Yathoktâchchaturguṇa iti** (p. 119. l. 13.) *Four times that mentioned above &c.* (p. 298. l. 24.) Here also, the distinction is to be observed even as before.

---

## Yājñavalkya Verse 160. (2)

**Mahiṣhī yatra yâdṛśeneti** ( p. 109. l. 18. ) *a female buffalo—in those places and by a similar penalty &c.* The meaning is that in a place viz. a particular field, the kind i. e. the extent of penalty has been stated by that kind and extent of the punishment should an ass be punished. A camel also similarly is to be punished in case of an offence by it. But there is no special penalty in cases of either.

The Author mentions here the reason. **Sasyoparodhakatwa iti** (p. 109. l. 19.) *for obstructing the crop &c.* (p. 299. l. 14.)

---

## Yâjñavalkya Verse 161.

From the text 'the herdsman shall be chastised' it being evident that he would have no pecuniary punishment, the Author mentions an exception : **Gopasya cha tâḍanamiti** (p. 109. l. 27.) *the chastising of the herdsman &c.* (p. 299. l. 32.). 'Keeper' i. e. the keeper of the cow, i. e. by his own fault. Or it may be explained thus : keeping is a keeper; the fault in that.

The Author expounds the portion " But the owner of the cattle incurs the fine already mentioned (before)": **Gomī punriti** ( p. 109. l. 30.) *but the herdsman &c.* (p. 299. l. 31.) 'A herdsman' i. e. an owner of cows. 'One who has cows is a cowherd' vide **Amara.**[1]

**Gobhistu bhakṣhītam sasyamiti** ( p. 110. l. 2. ) *crop consumed by cattle* &c. (p. 300. l. 16.) The meaning of this: He who demands back a

---

1 II. 9. 58.

crop consumed by the cows, should be paid the value of corn produced in the field and as assessed by the *Sâmantas*. 'Chaff' (*Palâla*) i. e. the residue after consumption, such as grass, chaff should be given to the owner of the cattle.

By the general rule stated in the text "should be given to the man who claims back", a particular rule is anticipated. The Author (therefore) states a particular rule although it is apparently established from the context : **Dhânyaṃ wai Karṣhakasya tu iti** (p. 110. l. 3.) *and the corn to the cultivator* &c. ( p. 300. l. 19. ) The meaning is that it should be paid to the same owner of the field.

---

## Yâjñavalkya Verse 162.

**Grâmavivîtasamîpavartini** ( l. 6. ) *situated in the neighbourhood of the village and pasture* (p. 300. l. 27.). 'Situated in the neighbourhood of the village', 'situated in the neighbourhood of the pasture' thus it is connected with each. Or, situated in the neighbourhood of the pasture, which is in connection with the village. That portion of land outside the village which is intended for the cows &c. to stand is known by the term *vivîta*-'pasture-land'-or it may be expounded as 'in the neighbourhood' of such. (Here the expression) 'by the cattle' is used extensively. **Etachchânâvṛtakṣhetraviṣhayamiti** ( l. 10. ) *This rule moreover is with reference to an open field &c.* ( p. 301. l. 6. ) i. e. relating to a field without an enclosure.

**Vṛtincha tatra kurvîteti** ( l. 5. ) *shall make there a hedge &c,* ( p. 301. l. 13. ) The meaning of this: There i. e. outside the field and around it, should make an enclosure like a rampart where the camel could not look through. There such holes through which dogs &c. could insert their jaws should be blocked. 'Should ward off a hole as may exist' is also a reading. Thus, an enclosure should be so constructed that it should be without any holes as may admit the jaws of dogs &c. or it should be very tall. Thus varieties have been stated in the matter of making an enclosure.

---

## Yâjñavalkya Verse 163.

**Adaṇḍyâṇ Kâṇakûtâṇ cheti** ( l. 22. ) *so are not punishable beasts*
PAGE 67. * *with one eye, or an ox with*[1] *a broken horn* (l. 8.) '*Kâṇaḥ*'
*i. e.* defective in one eye. '*Kûṭaḥ*' i. e. without a foot; i. e.
lame : **Śaśvatkṛtalakṣhanâḥ** ( l. 22. ) *which have been branded once*

---

1 काणकूटौ. There is also another reading काणकुब्जौ.

(l. 9.) i. e. which on account of doing damage to the crop have been punished often by branding or by a pecuniary punishment.

## Yâjñavalkya Verse 164.

**Nashṭam jagdhan cha Kṛmibhirti** (p. 111. l. 5.) *which has been lost, or destroyed by worms etc* (p. 303. l. 4.). The meaning of this: Owing to want of supervision by the man entrusted with the task of guarding (the cows) which is the duty of a cow-herd, if any cattle has *vanished i. e.* gone beyond the range of vision, or has been devoured by worms, or killed by dogs and the like; or has died on account of falling into an 'uneven place' i. e. a pit or the like, the herdsman himself must pay to the owner.

**Prasahya choraiṛaparhtânna dâpya iti** (p. 111. l. 6.) *He shall not be made to pay for those which have been forcibly taken away by robbers* (p. 303. ll. 5–6.). The meaning is that where the robbers have taken away by force from the herdsman, the owner should not be paid (the price of) the beast. **Vighushya tu ṛhatam choraiṛiti** (p. 111. l. 7.) *where after a noise it has been taken by robbers &c.* (p. 303. l. 7). Where it has been taken away openly by robbers after a loud beating of drums and the like, the herdsman is not liable to pay; i. e. if he informs the owner on the same spot 'immediately after the robbery.'

**Karṇan charma cheti** (p. 111. l. 9.) *The ears, skin &c.* (p. 303. l. 14.) 'Skin' i. e. the hide. *Wâlâh* 'tails' i. e. such as had become a mark. *Bastim* 'bladder' i. e. the particular organ (which serves as) the receptacle for the flow of urine. *Snâyuḥ* 'tendons' i. e. fat. vide **Amara**[1] : "and tendon, muscle". *Rochanâm* 'the yellow concrete bile i. e. of the beast. These he should deliver over to the owners. In the case of dead beasts, other identifying limbs also should be shown. 'Signs should be shown' is also a reading. Then, signs in the body of the cattle such as brand-marks and the like should be shown. This is the meaning.

---

## Yâjñavalkya Verse 165.

**Daṇḍaparimâṇârthaḥ śloka iti** (p. 111. l. 14.) *Verse laying down the measure of fine &c.* (p. 303. l. 20.) The meaning is that as the other meaning was not obtained from the previously cited verses, Thirteen and a half paṇas is to be taken as the rule laid down.

---

1 II. 6. 66.

## Yājñavalkya Verse 166.

**Tṛṇâdyanyatarâbhâva iti** i. e. *in the absence of grass* &c. not owned by an owner &c. **Anivârita âharediti** (p. 111. l. 19.) *should take without opposition &c.* (p. 304. l. 7.) The meaning appears to be that if opposed, should not take.

**Etachcha parigṛhitavishayamiti** ( p. 111. l. 21. ) *This, however, supposes pre-occupancy* (p. 304. l. 13.) i. e. what has been stated in the text the twice-born &c....grain, fuel and flowers.

---

## Yâjñavalkya Verse 167.

**Prachurakanṭakasantânasyeti** (p. 112. l. 5) *with abundant thorny bushes etc.* ( p. 305. l. 3. ). i. e. full of thorny trees &c.

Here ends the Chapter regarding

'DISPUTES BETWEEN THE OWNER AND THE KEEPER OF CATTLE'.

---

# Chapter XI.

## SALE WITHOUT OWNERSHIP.

**Vikrīyate asamakṣhamati** ( p. 112. l. 10. ) *sold behind his back &c.* ( p. 305. l. 16. ). Behind the back of the owner i. e. in his absence; in short, without his permission. In such a place where a sale without ownership takes place, what would be the rule of law ? Anticipating such a question, the Author introduces the text in the original; **Tatra Kimityâheti** ( p. 112. l. 11 ). *In such a case what should be done ? So the Author says* (p. 305. l. 18. ).

---

## Yâjñavalkya Verse 168.

**Asambhâvye drawyâdapi hīnamûlya iti** ( p. 112. l. 18 ). *not ordinarily resorted to* ; *at a price lower than the original thing &c.* ( p. 306. ll. 5-6 ). That is to say, even lower than the price which a thing originally deserves.

**Prakâsaṃ krayataḥ Śuddhiriti** ( p. 112. l. 21. ) *One purchasing openly is blameless &c.* ( p. 306. l. 11. ). A sale which is so made as to be open ; from such a one. This is the meaning.

## Yājñavalkya Verse 169.

PAGE 83*

With a view to expose the fault in the interpretation by another[1] the Author expounds it further : **Nashtamaparhtamityâdinâ** ( p. 112 l. 25 ) Beginning with *lost or stolen &c.* ( p. 306. l. 20 ).

This is the import : A thing belonging to another which was lost or stolen and was obtained by purchase, acceptance as a gift, or the like method from one not the owner, if any one sells it also to another, such a purchaser should cause such a vendor to be apprehended by the King's messengers such as the night patrols or the like, for warding off ( a charge of ) theft against himself, as also for the infliction of the Royal punishment. If, however, by any reason he is unable to have him captured or even to point him out, then the thing taken from him should be made over to the original owner, and then he becomes absolved.

The Author attacks this (interpretation) as faulty : **Tadidamanupapannamiti** ( p. 112. l. 28 ) *But it is improper &c.* ( p. 306. l. 30 ). Here the Author points out a reason viz. that this would be a repetition of the text[2] presently to be mentioned viz. "When the seller is pointed out &c." **Atonyathâ wyâkhyâyata iti** ( p. 112 l. 29 ). *So... is explained otherwise* ( p. 306 l. 32. ).

The Author expounds the term 'having found' in the original text: **Kretrhastastham jñâtweti** ( p. 112. l. 30. ) *having recognised a thing while the same is in the hands of the purchaser &c.* ( p. 307. l. 1. )

**Tadwijñâpanakâlâtprâgiti** ( p. 113. l. 2. ) *even before the time a complaint is made to the police &c.* ( p. 307. l. 6. ) i. e. before information is lodged with the police of the place.

---

## Yājñavalkya Verse 170.

**Mûle samâhrta iti** (p. 113, l. 8.) *When the original taker is produced* ( p. 307. l. 20. ) i. e. to say, the original seller. **Krayam Śodhayitwaiva śuddho bhavatîti** ( p. 113. l. 11. ) *He becomes exhonerated only upon justifying the purchase* ( p. 303. ll. 5–6. ) i. e. by exhibiting witnesses regarding his purchase.

End of the Chapter on **Sale without Ownership.**

---

1 i. e. श्रीकराचार्यः. See Mitāksharā. Cf. also Viśwarūpa on this verse.

2 of Yājn. II. 170.

# Chapter XII.

## OF THE RESUMPTION OF GIFTS.

The Author points out in substance the topic to be mentioned in this Chapter : **Adhunâ vihitâvihiteti** ( p. 114. l. 23. ) *now...proper or improper* ( p. 311. ll. 3-6. ). Resort to legally prescribed methods is non-resumption of gifts, and resort to means not legally prescribed is the non-delivery of what is donated ; this is the sub-division. Generally, however, the title at law is called Gifts. This is the meaning.

The Author expounds the text of **Nârada** "when one having not properly disposed of a thing &c. ": **Asamyagavihitamârgâsrayeṇeti** ( p. 114. l. 26. ) *not properly i. e. by means not laid down as proper* ( p. 311. ll. 9-10. ). 'In this very text is the title non-delivery of donations—intending to show this, the Author points out the sentence of dissolution of this entire clause: **Dattasyâpradânamiti** ( l. 27. ) *resumption of that which had been given &c.* ( l. 11. )

In the exposition of the nature of the non-delivery of donations by resort to method not legally prescribed, the nature of its opposite i. e. the non-resumption of gifts is apparent by the context itself, and so has not been separately indicated. Intending to point out this, the Author says : **Vihitamârgâsrayatweṇeti** ( l. 29. ) *By having resort to legally prescribed means &c.* ( ll. 12-13. )

The Author explains the nature of the non-resumption of gifts : **Dattasyânapâkarmeti** ( l. 28. ) *non-resumption of what had been given &c.* ( l. 15. ). Having regard to the fact that having donated according to the legally prescribed method, its resumption is prohibited, it should not be taken back ; this is the meaning. **Tachcha deyâdibhedeneti** (l. 29. ) *That, moreover, having regard to its division into what may be given &c.* (l. 17.) i. e. that title at law called Gifts.

**Atha deyamadeyamiti** ( p. 115. l. 1. ) *Now, what may be given, and what not &c.* ( p. 34. l. 19. ) What is to be given, as also a gift, are both varieties of non-resumption of gifts. What may not be given, as also what is not given, both are varieties of non-delivery of gifts. Thus the law of gifts is four-fiold. This is the meaning.

**Anishiddhadânakriyâyogyamiti** ( p. 115. l. 2. ) *a fit subject for an unforbidden transaction of gift* &c. (p. 34. ll. 21-22.). Unforbidden, and that also fit to be the subject of a gift. Thus is the compound (to be solved) as e. g. one's own property, without detriment to the family.

**Aswatayâ nishiddhatayâ cheti** ( l. 2. ) *either on account of its not being one's own property, or its being prohibited* ( p. 311. ll. 23-24. ).

*Anvâhita*[1] and the like not being one's own are not fit to be gifted. Where property is not sufficient for the maintenance of the family and one desires to make a gift, that is to be understood as unfit to be given on account of being prohibited. **Awyâwartanïyamiti** (l. 3.) *which cannot be revoked &c.* (p. 311. l 26.) i. e. which cannot be taken back.

In pursuance of the meaning of the text of **Nârada**, the Author introduces the original text : **Tadetatsaṇkṣhepata iti** (l. 4.) *this in brief* &c. (l. 28.)

---

## Yâjñavalkya Verse 175.

Above has been demonstrated in the text of **Nârada** the two-fold nature of invalid gifts viz. unfit to be given because not one's own, and unfit to be given because of being prohibited. There the variety of things unfit to be given as being forbidden, the Author points out by the negative test by an expression in the original text "without detriment to the family". **Kuṭumbâvirodhenetyaneneti** (l. 8.) *"without detriment to the family"—by this &c.* (p. 312. l. 5. The meaning is that what is insufficient for the maintenance of one's family must not be given.

PAGE 84.

The Author points out what has been stated as unfit to be given by reason of its not being one's own property, **Swaṃ dadyâdityaneneti** (l. 10.) *"One's property he may give", by this* (p. 312. l. 6.).

This is the import. : What is not one's own must not be given. Even if one's own property, what is insufficient for the maintenance of the family, must not be given ; thus (are) two kinds which must not be given. It may then be said, indeed by reason of not being one's own a group of five kinds has been stated by you as not to be given ; while eight kinds have been stated by **Nârada** as not to be given. So there would be a conflict. So the Author anticipates thê objection as to the conflict with a view to refute it: **Yatpunâr Naradeneti** (l. 10). *As to by Narada &c.* (l. 10).

The Author refutes, **Etadadeyatwamātrâbhiprâyeṇeti** (l. 13.) *This text only intends things which are inalienable* (p. 312 l. 16.). The import is that the enumeration in one group of the eight viz. the **Anwâhita** and the rest is only by reason of their common character of being unfit to be given, and not by reason of being not one's own property. Here the Author mentions the reason : **Putradârasarwasweti** (l. 14.). *Son, wife, the entire property &c.* (p. 312 ll. 17-18.).

---

1 A thing deposited as a collateral security (अनु+आहितं)
अर्थमार्गणकार्येषु अन्यास्मिन्वचनान्मम । दद्यात्स्वमिति यो दत्तः स इहान्वाधिरुच्यते ॥

Having expounded the portion "one's own property may be given without detriment to the family," and with a view to expound the remaining portion viz. "except a wife, and a son," the Author introduces: **Swam dadyâdityaneneti** ( l. 15 ), *in the text viz. one's own property he may give* ( p. 312. l. 20. ).

---

## Yâjñavalkya Verse 176.

**Sthâwarasya viśeshataḥ** ( l. 23. ). *especially of immovable property* ( p. 103. l. 1 ). The Author mentions the reason for an open acceptance of a gift. **Tasya suwarṇâdiwaditi** ( l. 25. ) *its...as...in the case of gold and other movables &c.* ( p. 313 l. 16. ).

The Author introduces the latter half of the aforesaid original text which is connected with the context. **Evaṃ prâsangikamiti** ( l. 26 ), *this—incidentally &c.* ( p. 313 l. 17 ) **Yadyasau dharmâtprachyuto na bhavatī iti** ( l. 28. ). *if the other does not swerve from ( the path of ) religion* ( p. 314 l. 1. ) i. e. he to whom it has been promised to be given.

Having stated what deserved to be mentioned in regard to things to be given and not to be given, the Author introduces that which deserves to be mentioned in the matter of gifts made and not made : **Nyâyamârgeṇa yaddattamiti** ( l. 30. ) *Whatever has been completely given according to law* (p. 314. l. 5.)

By stating that what has been given (lawfully) must not be resumed, the resumption of its opposite viz. what has not been (properly) given follows from the context : So the Author says : **Yatpunaranyâyeneti** (p. 116. l. 1.) *What moreover in an illegal manner &c.* (p. 314. l. 8.) **Adattan tu bhayakrodheti** (p. 116. l. 5.) *Invalid gifts are...fear, anger &c.* (p. 314. ll. 16-17.) Fear, and anger as well as sorrow—make up the compound expression, fear, anger, and sorrow ; a sudden excitement (caused) by these. Pain[1] by this ; in that manner. Thus is the compound (to be solved).

The Author sets about expounding the collected text of **Nārada** stated before: **Ayamartha iti** (l. 9.) *The meaning is this* &c.(p. 314. l. 25.) There also, the Author expounds the first expression viz. "price for a merchandise ": **Paṇyasyeti** (l. 9.) *for a merchandise &c.* (p. 314. l. 25.). Wishing to indicate an intention that the expression "valid gift" in the text of **Nārada** is used in connection with the "price of a merchan-

---

1 On p. 89. l. 16, For तेनासक्तयेति read तेन रुङ् तथेति ।

dise" and like other things, as well as independently by way of brevity, the Author says, **Yachhâdṛshṭârthamiti** (l. 11.) *What also for purposes*[1] *not mentioned &c.*

**Sahasramiti paribhâṣhya dadâtîti** (l. 16.) *stipulates for a thousand and gives*, (p. 315. l. 13.) The meaning is that having mentally determined that a hundred is to be given, if by reason of an exhuberation of the heart or a similar cause a declaration was made that a thousand shall be given, even though not intended in mind, what is given in pursuance of the declaration.

The text common to all disputes has been stated by the text of **Kâtyâyana** himself, so the Author says, **Tathedamaparamiti** (l. 22.) *Moreover, here is another &c.* (p. 316. l. 6.)

Thus ends the Chapter on Non-delivery of Gifts.

---

# Chapter XIII.

## RESCISSION OF PURCHASE.

**Dwiguṇan tu tṛtiyenhîti** (p. 117. l. 5.) *Twice as much on the third day &c.* (p. 317. l. 9.) double of the thirtieth stated before i. e. the fifteenth part. The author expounds insubstance the portion "After that time, it is absolutely the purchaser's" : **Paratonuśaya iti** (l. 5.) *thereafter...a recission &c.* (p. 317. l. 11.) **Etachcha bîjâdiwyatirikteti** (ll. 5-6.) *This, moreover...other than seed and the like &c.* (p. 317. ll. 11-12.) The compound is to be solved as—other than seed and things perishable by use.

Having thus borne in mind the statements in other Smṛtis, the Lord of the Yogis points out the mode of rescission in cases other than those mentioned before; so the Author says: **Bijâdikraye punariti** (l. 7.) *In the purchase of seed &c.* (p. 307. l. 13.)

The Author mentions a special rule for purchases made after inspection : **Yatpunaḥ parikṣhyeti** (l. 16.) *What therefore had been examined &c.* (p. 318. l. 8.)

---

### Yâjñavalkya Verse 178.

Although in the text "the trial of seed, metal, beasts of burden, jewels, females, milch cattle and males," enumerated in the order viz.

---

1 The reading in the Mitākshara is यच्चाऽग्रहार्थमदृष्टार्थं दत्तं, while the reading here appears to be यच्चादृष्टार्थमिति. This is exactly what is explained in the Bālambhattī. P. 287. ll. 20-23.

seed &c. still in the case of milch cattle such as the buffalo and the calving and milking, the test is easily made as to the lower or higher nature by means of the milk, the Author mentions that prominently, **Dohyâdiparikṣhâprasangeneti** ( l. 18. ) *While treating of the inspection of the milch cattle &c.* (p. 318. l. 15.)

## Yâjñavalkya Verse 179.

**Paṭâdau panchapalâ vṛddhiriti** ( p. 118. l. 2. ) *In the case of cloth &c. the increase is five palas* ( p. 319. l. 17. ). Here although in the text "woolen and cotton yarns" a blanket, being the first, is ( deemed to be) enumerated, still the statement that cloth etc., is proper, as the inverse order is intended.

## Yâjñavalkya Verse 180.

**Yatra prâvârâdau iti** ( l. 8. ) *Where in an upper garment &c.* (p. 319 l. 29.) *Prâvâra* i. e. an upper garment, vide **Amara** "the two viz. *prâvâra* and upper garment are the same".

Here ends the Chapter on Rescission of Purchase.

# Chapter XIV.

## BREACH OF CONTRACT OF SERVICE.

**Aparaṃ vivâdapadamiti** (p. 118. l. 20.) *another title of law* ( p. 320. l. 20. ) The meaning is that not having been set out in the text[2] "Of these the first is Recovery of Debts &c." another title at Law.

PAGE 85*

The Author expounds the text of **Nârada** "If one has promised to render service" &c. : **Âjñâkaraṇamiti** (l. 23. ) *performance of an order &c.* ( p. 320. l. 29. )

The Author states the common epithet of a pupil, an apprentice, a hired servant, an operative and others ; **Teshâmādya iti** ( l. 23. ) *Of these the first* &c. ( p. 321. ll. 3–4. ) **Sāmānyaṃ aswatantratwamiti** ( l. 28. ) *state of dependence is common &c.* (p. 321. l. 14.) The meaning of this : Of these five i. e. of the pupil and the rest, dependence has been stated as the common characteristic by the sages viz. great *ṛshis*. Among these, in the group of four beginning with the pupil and the

1 II. 6. 117. 2 of Manu Ch: VIII, 4.

rest, the workman by contract belongs to a different category and has as such been mentioned by the sages. The meaning is that the workman's is a kind different from and inferior to all the four. Moreover their living i. e. usage is also special on account of their performing auspicious duties. The author points out at details what has been stated before viz. performing auspicious duties is their special (means of) livelihood.

The Author expounds the portion of the aforestated text of **Nârada** viz.: "A student, an apprentice, a hired servant; and the fourth, a person specially appointed (to do a thing)": **Tatra Śishya ityâdinâ**. Beginning with *there a student &c.* (p. 321. l. 23).

In the text (p. 119. l. 5.) "the house, and the gateway, the places where impurities are deposited &c." the Author explains the expressions 'place where impurities are deposited', 'dust-bin' and 'clearing', **Aśuchisthânamityâdinâ** (l. 6.) Baginning with *place of impurity* &c. (p. 321. l. 26.)

The Author mentions the three-fold division of a paid servant from among the pupil, the apprentice, and a paid worker: **Bhṛtakascheti** (l. 7.) *A hired servant &c.* (p. 321. l. 30.)

It has been stated that slaves are of fifteen kinds; the Author details these: **Dâsâḥ punarityâdinâ** (l. 8.) Beginning with *Slave again* &c. (p. 322. l. 1.) **Dhwajâṛhta iti** (l. 20.) *made captive under a standard* (p. 322. l. 30.). **Daṇḍadâsascheti cha** (l. 21.) *a slave* of *punishment* (p. 322. l. 33.) One acquired in a fight, is a 'slave under a standard'. A man who has swerved from (the vow of) hermitage, and who has not performed a penance when the king has ordered life-long slavery as the punishment for such a one, he is known, as a slave of punishment, who has swerved from his vow as a hermit. This is the distinction. **Na tu parisaṅkhyârtham** (l. 21). *and not with a view to limit*[1] *the number*. (p. 322. l. 35.). The meaning is, not intended to exclude all except those enumerated.

Having thus stated, in the course of context, the text of **Another Smṛti**, the Author discusses the topic in the original Text: **Tatraishâmityâdinâ** (l. 22) *Of these, here &c* (p. 323 l. 1.)

Now the Author introduces the original text: **Dâsântawâsinoriti** (l. 25.) *regarding a slave and an apprentice &c.* (p. 323. l. 8.)

---

1 परिसंख्या in its technical sense means exclusion. Here the sense is that this is not an exhaustive enumeration, so as to exclude any other kind, but only as indicating that these seven (among others) are slaves.

## Yâjñavalkya Verse 182.

**Apiśabdâdâhito dattascheti** (l. 28.). *From the use of the word 'also' (api), are included one 'pledged', as also one 'given'.* (p. 323. ll. 17–18.). (the expression) 'by robbers' (is understood to) follow i. e. pledged and given by robbers, the pledging by the owner being presently to be mentioned hereafter. **Yadi swâmi no muṇchatîti** (l. 29.) *If the owner do not release &c.* (p. 323. l. 19.) i. e. he who has obtained by force or by an act of theft, and acts as if he were master himself.

The Author expounds the portion of the original text viz. by paying the expenses of maintenance : **Bhaktadâsâdînâṃ** (p. 120. l. 1.) *of a hired servant and others &c.* (p. 326. l. 1.) **Sambhakṣhitaṃ Yaddurbhikṣha iti** (l. 5.) *what has been consumed during famine &c.* (p. 324.l.13.) What has been consumed during famine cannot be wiped off by labour. The meaning is that he is not discharged by merely[1] working for him from whom he eats the food, but by doing work for him and by a donation of a pair of cows. This, it should be noted, is the special point in the text of **Yâjñavalkya**.

**Pratiśîrṣhakadâneneti** ( p. 120. l. 9. ) *on giving each a substitute* ( p. 324. ll. 24–25.). Shall be redeemed by offering another person of equal capacity. The meaning is that by offering another man equal to himself in the capacity for work, he may be released.

The Author states the substance of the text "Upon the female slave being kept in check" : **Dâsena saheti** ( l. 11. ) *with the slave &c.* ( p. 324. l. 29. ) **Tenaivoktamiti** ( l. 15. ) *Has been laid down by the same Sage* ( p. 325. l. 2. ) 'The same sage' i. e. by **Nārada**.

---

## Yâjñavalkya Verse 183.

**Dâravaddâsateti** ( l. 25. ) *slavery is analogous to the condition of a wife* (p. 326. l. 4.) The meaning is that as a marriage is in the descending order and not in the inverse order, so is slavery also.

---

## Yâjñavalkya Verse 184.

**Swaśilpamichhanniti** ( p. 121. l. 1. ) *If one wishes to be initiated into the art of his own craft &c.* ( p. 326. l. 23. ) i. e. the craft prescribed for his own caste.

Thus ends the Chapter on Breaçh of Contract of service.

---

1 On p. 85. l. 22. For यद्यं भुंक्ते read यदीयं भक्तमुपभुंक्ते ।

## Chapter XV.

### TRANSGRESSION OF A COMPACT.

The Author expounds the text of **Nârada** viz. "Among the Pākhaṇḍis, Naigamas &c.": **Pâribhâṣhikadharmeṇeti** (p. 121. l. 12.) *in accordance with special provision of law* (p. 328. ll. 2-3.). It has been said that it has been pointed out by a reference to transgression; the Author exhibits it : **Tadwyatikrâmyamâṇamiti** (l. 12.) *When this is being transgressed &c.* (p. 328. l. 4).

PAGE 86*.

This is what is meant here : By (means of) the expression "Non-Transgression of a compact" having named in an affirmative[1] manner the opposite nature of the title of Law known as the Transgression of a compact, by saying that that is known as a title at Law, the Title at Law is indicated in the negative manner, and so the name is in the negative form.

The Author introduces the original text : **Tadupakramârthamiti** (l. 4.) *By way of an introduction to the same* (p. 328. l. 6.)

### Yâjñavalkya Verses 185-192.

**Anubandhâdyatiśayeti** (p. 122. l. 3.) *In cases of aggravated offences or the like* (p. 329. l. 27.). *Anubandha* means fault i. e. to say, offence. **Râjñâ prathamasâhasamiti** (l. 13.) *by the king with the first amercement &c.* (p. 330. l. 21.) In this (portion of the) book by the use of the pronoun 'which', the word 'that' followed as of course from the context and so that word has not been used. The rest is easy to understand.

Thus ends the Chapter on Transgression of a Compact.

---

## Chapter XVI.

### THE NON-PAYMENT OF WAGES.

In regard to the Title of Law viz. the Non-payment of Wages the characteristics of which have been thus stated in **Another Smṛti**, the Lord of the Yogis states a decision, so the Author says : **Tatra nirṇayamâheti** (p. 123. l. 11.) *There the Author mentions a decision &c.* (p. 333. l. 11.)

---

### Yâjñavalkya Verse 193.

**Bhṛtyâya vetanaṃ dadyâditi** (l. 17.) *pay wages to the servant.* (p. 333. l. 28.) The meaning is : He who is maintained is a servant.

1 i. e. अन्वय.

**Yathâkramamiti** (l. 18.) *according to the agreement &c.* (p. 334. l. 1.) at the beginning, in the middle, or at the end, i. e. without infringing the period of time determined by the accord of parties. By the expression "As may have been settled in regard to the work" is meant that money determined by the arbiter by regard to the work is called wages, and thus it should be regarded as a statement of the nature of wages.

---

## Yâjñavalkya Verse 195.

**Yastu bhṛtya iti** (p. 124. l. 1.) *A hired servant who however &c.* (p. 334. l. 24.). Here the order of words should be—at an improper place or time transgresses through insolence or the like.

---

## Yâjñavalkya Verse 196.

**Anekabhṛtyasādhye Karmaṇīti** (l. 6.). *For a task to be accomplished by several workmen* &c. (p. 335 l. 10). i. e. in the case of a work being performed after a stipulation that it should be accomplished for certain wages by one, two, or more women working together. **Na punaḥ samamiti** (l. 11). *and not an equal amount* (p. 335. l. 24). For one work, commenced under an agreement by five workmen for performing it for 10 paṇas but owing to illness or other cause that work was not completed by them all, but only a portion was done. In such a case payment should not be made at two paṇas every man, but more or less should be given to each according to the work done by him. This is the meaning. From this also it follows that on the completion of each work although the owner has made payment of the stipulated amount, the labourers should, nevertheless, take it by dividing it (among themselves) only by regard to the work performed by each.

**An Objection.** It may be said, indeed, by saying that "an equal amount should not be given," it would be tantamount to saying that wages should be paid only in accordance with the work done by each. Then it comes to this viz. payment should be made by dividing and distributing individually. This is improper. Since a fixed remuneration was stipulated with labourers jointly only, and not severally, it is proper that wages should be received according as stipulated. Anticipating such an objection, the Author refutes it : **Na Châvayavaśaḥ iti** (p. 124. l. 11.). *Not...for the several parts &c.* (p. 335. l. 25.).

**The Answer.** This is the import : Although a distributive[1] payment was not stipulated, still, as it is proper that pay-

---

1 On p. 86. l. 30 for यदप्यविभज्य read यद्पि विभज्य ।

ment should be made according to the work, and under the authority of the text also, payment is made distributively. This is a good answer, and so has been incorporated by the Author in the book.

PAGE 87*

**Sâdhye tûbhâbhyâmiti** ( p. 124. l. 12. ) *If, however,...be accomplished by both &c.* ( p. 335. l. 26. ). The expression " by both" is only indicative. Therefore, it means also if accomplished by many. In the chapter on the Title of law called Breach of Contract of Service, commencing with the text "...Five sorts of attendants &c" and also by "Among these are four sorts of labourers, and slaves ( of the fifth category ) are of fifteen kinds : A student, an apprentice, a hired servant, and the fourth, a person specially appointed to do a thing" having stated the five-fold division of attendants, the three-fold division of a hired servant has also been stated thus : "Here, the best is that of a soldier, the agriculturist is the middle class, and the porters are the lowest class : Thus there are the three classes of hired servants." Thus by the text[1] "one who having received the wages &c." has been mentioned an agricultural labourer in regard to his hire, now the Author points out a special rule relating to a hired soldier, and a hired carrier. and so he says : **Âyudhīyabhârawâhakāviti** ( p. 124. l. 15. ). *A soldier and a carrier* &c. ( p. 335. l. 30. )

## Yâjñāvalkya Verse 197.

**Bhânḍa** means a vessel or the like, vide the **Amara**[2] "the words *Âwapana, Bhânḍa, Pâtra, Amatra,* and *Bhâjana* ( all mean a pot or a vessel )". Moreover the same Author indicates the word to have several[3] meanings : "The word *Bhânḍa* is used for horses' ornaments, a vessel, or the stock-in trade of a grocer." **Wâhakena nâśitamiti** ( p. 124. l. 18. ). *be destroyed by a carrier* &c. (p. 836. l. 7.). The word carrier also includes by implication one with arms.

## Yâjñavalkya Verse 198.

**Bhṛtyantaropâdâna iti** (l. 27. ) *When another servant can be procured* &c. (p. 336. l. 32.). Procuring, taking up i. e. offering. **Etachchâwyâdhitâdivishayamiti** ( p. 125. l. 1. ) *This, moreover, regards one who has not had any disease &c.* ( p. 337. l. 10. ) i. e. what has been stated in the text beginning with " one who raises on obstruction at the time of starting" &c.

1 Yâjn. II. 193. 2 II. 9. 33. 3 III. 3. 43.

How can thus the division of the topic be ascertained? Anticipating such a question the Author says—from the statement of the rule by **Manu** regarding discrimination in determining punishment, when he is not affected by a disease &c. **Bhṛto nârta iti** (l. 1.) *A hired servant not being ill &c.* (p. 337. l. 11.). *Bhṛto* is a hired servant. 'Not being ill' i. e. being without any disease &c. Here having regard to the text of **Manu** viz. "no wages shall be paid to him", it is to be taken in connection with the remaining portion of the aforestated clause.

**Yastvapagatawyâdhiḥ swastha eveti** (p. 125. l. 5.) *One, moreover, who after he is cured of the disease, being perfectly at ease &c.* (p. 337. l. 20.). Being affected by a disease and afterwards (one) cured of the disease. One not being affected by a disease is perfectly at ease. This is the difference.

Thus ends the Chapter on Non-payment of Wages.

---

## Chapter XVII.

### GAMBLING AND BETTING ON ANIMALS.

**Adhuná dyûtasamâwhayâkhyamiti** (p. 125. l. 11.) *Now...called Gambling and Betting on Animals &c.* (p. 338. l. 3.). Gambling as well as Betting on animals (make up the compound expression) Gambling and Betting on Animals. This is the definition. A title of Law in which occurs this is known in that manner. Betting which is accomplished by means of inanimate things such as the dice and the like is Gambling, and what is accomplished by means of animate beings such as the cocks and the like is Betting on Animals. According to the text of **Nárada** both these are connected with the dice. With a view to state this, the Author points out : **Akṣhâḥ pâsakâ** ityâdinâ (p. 125 l. 12). Beginning with *Akshâḥ means dice &c.* (p. 338 l. 7).

In the title of Law called Gambling and Betting on Animals thus defined and marked, **Yâjñavalkya** points out the remuneration for the keeper of the gambling Hall, so the Author says, **Tatra dyûtasabhâdhikâriṇa iti** (l. 19) *There...... of the keeper of the Gambling Hall &c.* (p. 338 l. 21).

---

### Yâñavalkya Verse 199.

**Tadâsśraya Śatiketi** (p. 125 l. 22) *a hundred in reference to it.* (p. 338 l. 29). In reference to it i. e. in reference to the bet. The meaning is a hundred-fold increase, or exceeding that also.

This is what (is intended to be) said : In whichever bet one wins, a wager fixed by a hundred or a more of the *Kâkiṇi* or other coin, that winner is called a ten percent game-keeper. [1]The meaning is that the officer in charge of the gambling hall should take five Kâkinis or the like when a hundred Kākinis or the like are won.

## Yâjñavalkya Verse 201.

The Author expounds the word *Sthâna* (assembly) in the original text : **Avipratipannam iti** (p. 126 l. 12) *regarding which there is no difference of opinion &c.* (p. 340 ll. 12-13). i. e. put on in the assembly, in short, not disputed.

## Yâjñavalkya Verse 202.

PAGE 88* **Kwachiddûtan nisheddhum iti** (p. 126 l. 19) ...*by way of prohibiting gambling in certain cases &c.* (p. 340 l. 27). From the penal rule for one gambling with false dice, it appears that gambling with such dice as also gambling in a place without a keeper has been prohibited.

Thus ends the Chapter on Gambling and Betting.

# Chapter XVIII.

## OF ABUSE

The Author expounds the text of **Nârada** viz. "the country, caste &c." **Desâdînâm iti** (p. 127 l. 8) *about a country &c.* (p. 342 l. 15). The Author points out the abusive languges of countries &c. by examples : **Tatra Kalahapriyâh ityâdinâ** (p. 127 l. 10). *There...are fond of quarrelling &c.* (p. 342 l. 19). **Âdigrahaṇâtswawidyeti** (p. 127 l. 11). *By the use of the term âdi, (so forth)...one's own learning &c.* (p. 342 ll. 22-25) The meaning is that without directly reviling another individual, with the very object of condemning him and even when oneself is learned or not a learned man, or by[2] reviling the science of logic or a mechanical

1 There is a mistake in the print here. Line 30 on p. 87 should be read as part of verse 199, and at its end, and not at the commencement of Verse 201 as has been done in the print.

2 On p. 88. ll. 7. 8. For तत्र निंदाभिप्रायेण read तन्निंदाभिप्रायेण. and in 10 for शिल्पादिनिंदाया read शिल्पादिनिंदया.

art in which another is proficient, and thus reviling learned men and the like.

In regard to the offence of Abuse, having laid down a three-fold division by regard to the little viz *Nishthura* (cruel), *Aślilâ* (indecent) and *Tivra* (sharp), for mentioning different prunishments, the characteristics of *Nishthura* &c. have also been mentioned by **Nârada,** so the Author says : **Tasya[1] cha dandatâratamyârthamityâdinâ** (p. 127 l. 12) *of that with a view to discrimination as to punishments* &c. (p. 342 ll. 26-28). Here moreover the distinction is that a *nishthura* (cruel) accusation is of a lower and the *tivrâ* (sharp) is of a higher degree.

It has been stated before that indecent means insulting ; that insult is a common characteristic in the three varieties of abuse viz. *nishthura* and others, and then it would be incongruous to mention as a special characteristic of *aślila* (indecent) variety of abuse as has been done in "abuse couched in insulting language is *aślila*", and so the Author says that the word *nyanga* is used here in the sense of untrue and ( therefore ) censurable : **Atra nyangamiti** (p. 127 l. 16). *Here insulting means &c.* (343 l. 8).

---

## Yâjñavalkya Verse 203.

Now the Author introduces the original text **Tatra[2] nishthurâkrośa iti** (p. 127 l. 18) *of these...a Nishthura abuse &c.* (p. 345. l. 13).

The Author points out the nature of ironical statements whether true &c. by examples : **Netrayugalahîna ityâdinâ** (p. 129 l. 22.) *devoid of both the eyes &c.* (p. 343. l. 24.)

It may be said that **Manu** has prescribed a fine not less than a *Kârshâpana*"[3] in the text " not less than a *Kârshâpana,*" and so there is a conflict with him by reason of this rule laying down as a punishment 13½ Paṇas ; to that the answer is that such a rule is intended when a member of the *Varṇa* lowest in order in point of usage &c. is attacked, and when (a member of) the same *Varṇa* is the accuser, he is to be punished with a fine not less than a *Kârshâpaṇa* and that this punishment has no reference to all, and thus the Author removes the contradiction by (pointing out) the difference

---

1 The Subodhini reads तत्र च.

2 Ch. VIII. 274.

3 A coin greater in value than a paṇa=4 Kakinis *i. e.* 20 cowries cf. "वराटकानां दशकद्वयं यत्सा काकिणी ताश्च पणश्चतस्रः"—भास्कराचार्यः व्यवहारसूत्रे.

in the objects (of its application) : **Kâṇam wâpyatha wâ Khañjam ityaddinâ** (p. 127 l. 25). *One-eyed or lame &c.* (p. 343 l. 30). A punishment in which *Kârṣhâpaṇa* is the least—such a one. This is the meaning.

---

## Yâjñavalkya Verse 205.

By way of indicating the meaning of ह 'Indeed' the Author says **Anyâm[1] wâ twajjâyâmiti** *i. e. or even another viz. your wife.*

The Author mentions a special punishment also for an abusive language under special circumstances : **Evam samānaguṇeshuityâdinā** (p. 128 l. 6). *Thus for men of equal merits* &c. (p. 344 l. 16). From the presription of a double and the like sentence in this clause by relation to the amount mentioned in the previous clause, it appears that it relates to the abusive language.

---

## Yâjñavalkya Verse 206.

**Parabhāryāsu punaraviśeṣheṇeti** (p. 128 l. 9). *As for...regarding 'others' wives, a uniform &c.* (p. 345 l. 1). The wife may be of one inferior or superior in conduct as compared with the abused. Here the expression 'other's wives', refers to the wife of any ; for it should be seen, it is for this that the expression 'uniform' is used.

It may be argued, indeed, in the commentary on the previous clause a fine of twenty-fives *paṇas* has been laid down by taking up the expression viz "I shall have intercourse" with your wife—as something in addition. While here fifty *paṇas* have been stated, thus there is

PAGE 89* a mutual contradiction. To that the answer is, no, it is not so. In the first, a special punishment has been stated for an abuse of a man through the wife ; here the abusive language is addresed to another's wife herself, and thus tnere is a difference.

**Uttarâdharabhâwâpekṣhyeti** (p. 128 l. 17) *by reference to the relative superiority or inferiority &c.* (p. 345 ll. 21-22). i. e. by regard to a discrimination as to the inferiority or superiority in the *Varṇa* and *Jâti*. The Author points this itself by an example **yathâ murdhâvasiktamityâdinâ** (p. 128 l. 18) as a *Murdhâvsikta &c.* (p. 345 l. 22). Here is an abuse made by a Brâhmaṇa in reference to a *Murdhâvasikta.*

**Pratilomâpawâdeṣhuiti** II 207) *in the case of an abuse of a superior class &c.* According to the text stated above viz[2] : "In the descending

---

1 V. L. in the Mītâkṣharā. अन्यां वा त्वज्जायामभिगन्ताऽस्मीति ।.
2 i. e Yâjñ. II. 183.

order of the *Varṇas*" taking it as established that in the case of an abuse by a *Kṣhatriya* of a *Brâhmaṇa*, and in that of an abuse by a *Brâhmana* of a *Kṣhatriya* the penalty presently to be mentioned to be a hundred *paṇas*, and fifty *paṇas* respectively, the Author proceeds **Kṣhatriyâkṣhepanimittâdinâ** (p. 128 l. 13) *which is the penalty for the abuse of a Kṣhatriya* (p. 345 l. 25). **Kinchidadhikamiti** (l. 89) *slightly-above &c.* (p. 345 l. 24). Slightly, meaning thereby a quarter; and here that should be understood as the fourth of a hundred. Intending this very thing, the Author says, **Panchasaptatyâkamiti** (l. 19) viz. *seventy-five &c.* (l. 25). The meaning is that by regard to a hundred, twenty-five is a quarter, seventy five is slightly more than fifty i. e. by a quarter.

The Author states the penalty for an abuse by a *Kṣhatriya* of a *Mûrdhâvaṣikta* : **Kṣhatriyopi tam**[1] (p. 128. l. 19.) *A Kṣhatriya also... him* (p. 345. l. 26.). *Tam* (him) i.e. *Mûrdhâvaṣikta*. Here the penalty for an abuse of a *Brâhmaṇa* by a *Kṣhatriya* is a hundred, the amount less by a quarter seventy-five, is the penalty for an abuse of a *Mûrdhâvaṣikta*, would be less as compared with that of a *Brâhmaṇa*, and more as compared with that of a *Kṣhatriya*.

It is less by a quarter than a hundred the punishment for an abuse by a *Kṣhatriya* of a *Brâhmaṇa* or a *Kṣhatriya*, and being seventy-five i. e. a quarter more than fifty the measure for an abuse by a *Brâhmaṇa* of a *Kṣhatriya*, and the same is also for that committed by a *Kṣhatriya* of a *Mûrdhâvaṣikta*, these two—the *Brâhmaṇa* and *Kṣhatriya*—the *Mûrdhâvaṣikta* being superior to *Kṣhatriya*, for an abuse by a *Mûrdhâvaṣikta* of a *Brâhmaṇa* the fine of seventy-five only being a quarter less than a hundred, the penalty for an abuse by a *Kṣhatriya* of a *Brâhmaṇa*, similarly a *Mûrdhâvaṣikta* being inferior to a *Brâhmaṇa*, the fine for an abuse by a *Mûrdhâvaṣikta* of a *Kṣhatriya* being seventy-five i. e. a quarter more than fifty the measure for an abuse made by a *Brâhmaṇa* of a *Kṣhatriya* by reason of its being made by a *Brâhmaṇa*. Thus the import is that both ways the penalty is the very same.

Thus having stated the punishment for a mutual abuse between (members of the) *Varṇas* and *Jâtis*, the Author mentions the penalty for an abuse among *jâtis* themselves, i. e. the *jâtis* born from a *Brâhmaṇa* in a *Kṣhatriya* or a *Vaiśya* woman i. e. a mutual abuse between the *Mûrdhâvaṣikta* and *Ambṣhtha* : **Mūrdhâvasiktâmbashṭhayoriti** (p. 128. l. 207.) *between a Mûrdhâvaṣikta and an Ambaṣhtha &c.* (p. 354.

1 This is another reading.

l. 29.) Here, in the place of the *Mûrdhâvaṣikta*, and in the place of the *Kṣhatriya* is the *Ambaṣhtha*. The rule to be understood is that for an abuse by an *Ambaṣhṭha* towards a *Mûrdhâvaṣikta* a hundred, and for a converse, a fifty.

With a view to indicate that between the *Varṇas* and *Jâtis* or among the *Jâtis* themselves—for an abuse between (members of) a descending and an ascending order the penalty to be determined is on the same line as stated before i. e. less or more by a quarter, the Author says: **Evamanyatrâpîti** (l. 22.) *Similar...in other cases also* (p. 346. l. 2.). The method of determination, moreover, has been indicated in connection with an abuse of a *Mûrdhâvaṣikta* viz. "as a *Mûrdhâvaṣikta* &c."

For an abuse by a *Brâhmaṇa* of an *Ambaṣhtha* the penalty is thirty-seven and a half *paṇas*. Here the penalty is fifty. Here the determination of the quarter is by regard to fifty and not to a hundred.

For, as compared with the *Kṣhatriya* an A*mbaṣhtha* being inferior, and by regard to a *Vaiśya* superior, the penalty for an abuse by a *Brâhmaṇa* of a *Kṣatriya* viz. being fifty *paṇas*, an amount greater than it by a quarter of the same viz. thirty-seven and half, shall be imposed. This is the meaning.

In the case of an abuse by a *Brâhmaṇa* of a Nishâda,[1] the penalty is eighteen and three quarters of *paṇas*. [2]Here the determination of the fourth is by relation to twenty-five. Therefore (the status of) a *Nishāda* being inferior to (that of) a *Vaiśya* and superior to that of a *Śûdra*, of the penalty which is for an abuse by a *Brâhmaṇa* of a *Vaiśya* viz. twenty-five, a quarter less than that, as also of the penalty which is for an abuse also by a *Brâhmana* towards a *Śûdra* viz. twelve and a half *paṇas*, more by a quarter than that viz. eighteen and three quarters is the penalty. This is the meaning.

For an abuse by a *Nishâda* of a *Brâhmaṇa*, the penalty is one hundred and seventy-five. Here, moreover, the determination of the quarter is to be also by regard to a hundred. For, by regard to a *Śûdra* a *Nishâda* being superior, as also by regard to a *Vaiśya* being inferior, (as compared) with the corporal punishment of death which is for an abuse by a *Śûdra*[3] towards a *Brâhmaṇa*, a money

1 A son born of a *Brāhmaṇa* by a *Sūdrā* wife. see Yājñ. I. 91.

2 Here there is a mistake in the print. On p. 89. l. 26. between the last two words दंडो and य: one entire line has been omitted. The correct text is (दंडो) भवति। अत्र पञ्चविंशत्यपेक्षया पादव्यवस्था। ततश्च वैश्यापेक्षया न्यूनत्वान्निषादस्य शूद्रापेक्षयाऽधिकत्वाच्च ब्राह्मणेन वैश्याक्षेपे दण्डो (य: पंचविंशाति).

3 On p. 89. l. 30. for शूद्रत्वेन ब्राह्मणापेक्षया read शूद्रेण ब्राह्मणाक्षेपे.

fine being[1] inferior, the punishment happens to be of a hundred and seventy-five which is a little less than the penalty for an abuse by a *Śûdra* of a *Brâhmaṇa*, and a little more than a hundred and fifty which is the punishment for an abuse by a *Vaiśya* of a *Brâhmaṇa* i. e. a hundred and seventy-five. This is the meaning.

For an abuse by an *Ambaṣhṭha* of a *Brâhmaṇa* the penalty is a hundred and twenty-five. As compared with a *Vaiśya* an *Ambashṭha*[2] being superior, and as compared with a *Kṣhatriya* being inferior, a punishment less than that which is for an abuse by a *Vaiśya* of a *Brâhmaṇa* viz. a hundred and fifty, and more than a hundred which is the penalty for an abuse by a *Kṣhatriya* of a *Brâhmaṇa* viz. a hundred and twenty-five occurs. This is the meaning.

PAGE 90*.

For an abuse by a *Mûrdhâvaṣikta* of a *Brâhmaṇa* has been pointed before. This rule of determination among the *Varṇas* and *Jâtis* for an abuse of a descending or an ascending order is also that among the *Jâtis* themselves. In the case of an abuse by an ascending order of that of the descending one, however, like that in the case of *Brâhmaṇa*, *Kṣhatriya* and *Vaiśya* in the case of the *Mûrdhâvaṣikta*, *Ambaṣhṭha* and *Nishāda* also, the determination of the penalty is to be inferior viz. fifty, twenty-five, twelve and a half, one and a half of a hundred, a hundred and fifty.

This is what is (intended to be) said : In the case of an abuse of one who is superior[3] to and more remote, a penalty greater than that for one who is nearer, so also for an abuse of one who is inferior to and one who is more remote, a less penalty.

We (now) resume the context : **Evam sarvavarṇa-viṣhaya iti** ( p. 128. l. 23.) thus *for all the Varṇas* &c. (p. 346. l. 3). All i. e. the *varṇas*. Thus is the compound ( to be solved ). *All* i. e. *the Mûrdhâvaṣiktas* and others; *the varṇas* such as the *Brâhmaṇas* and others discussed in the clause about two-fold in the previous sentence i. e. in (the clause) "of an inferior half ; two-fold :

---

## Yâjñavalkya Verse 207.

The Author illustrates the two-fold and three-fold by examples: **Śatapaṇâḥ...Sârdhaśatapaṇâ iti cha** ( p. 128. l. 27. ) a *hundred...a*

1 For दण्डस्यान्यूनत्वेन read दण्डस्य न्यूनत्वेन.
2 See Yājñ. I. 91. for the terms मूर्धावसिक्त, अम्बष्ठ, निषाद and पारशव.
3 For स्वस्यासान्निष्टितो read स्वस्मात् सन्निहितो.
4 The *Mitāksharā* reading is सवर्णविषये.

*hundred and fifty paṇas &c.* Here the plural in the term *daṇḍâḥ* (punishments) is by regard to the (p. 346. ll. 15-16.) plurality of the abuses of the *Varṇas* which is the cause. For, (an abuse) by the *Kṣhatriya* and *Vaiśya* towards a *Brâhmaṇa*, by the *Vaiśya* and *Śûdra* towards *a Kṣhatriya*, and by a *Śûdra* towards a *Vaiśya*, thus even in the descending order there is multiplicity of offences.

For an abuse by a *Śûdra* of a *Brâhmaṇa*, the punishment is corporal only, not of money.

The rule stated for an offence committed by the *Kṣhatriya, Vaiśya or Śûdra* in regard to a *Brâhmaṇa*, the Author extends to an offence by a *Vaiśya or Śûdra* in regard to a *Kṣhatriya*: **Viṭśûdrayorapiti** (p. 129. l. 1). *also of a Vaiśya* and *Śûdra* &c. (p. 346. l. 23). One who is close to one who is near, is lower down by one class i. e. separated by one; e. g. for the *Kṣhatriya* and *Vaiśya* who are lower down immediately and by one grade (respectively) than a *Brâhmaṇa*, as a penalty is for an offence against a *Brâhmaṇa* by the *Kṣhatriya* and *Vaiśya*, similarly is a penalty for the *Vaiśya* and *Śûdra* who are immediately lower down or more than one down than the grade of a *Kṣhatriya* respectively. This is the meaning.

For an abuse of a *Brâhmaṇa* by a *Kṣhtriya* who is *immediately* after the *Brâhmaṇa* as the penalty is a hundred, so also is a hundred for an abuse of a *Vaiśya* by a *Śûdra* who is immediately after the *Vaiśya* So the Author says: **Śudrasya cheti** ( p. 129. l. 2. ) *for a Śûdra also &c.* (p, 346. l. 25.).

The Author expounds the second half viz. "of one of a lower class &c." **Ânulomyena tuiti** (p. 129. l. 9.) *of the lower classes however &c.* (p. 346. l. 27.). **Brâhmaṇâkrośanimittâditi** ( p. 129. l. 3. ) *for abusing a Brâhmaṇa* (p. 346. l. 29.) i. e. from a hundred which is the penalty on account of an abuse by a *Kṣhatriya* in regard to a *Brâhmaṇa*. **Prati-warṇamardhasyârdhasyēti** (p. 129. l. 4.) *of a half in the case of each class respectively* &c. (p. 346. l. 30). For an abuse made by a Brâhmaṇa towards a *Kṣhatriya* half of a hundred i. e. fifty is the fine; for an abuse made by him also towards a *Vaiśya*, half of a fifty i. e. twenty-five, and for an abuse made by him similarly towards a *Śudra* half of twenty-five i. e. twelve and half *paṇas*. This is the distinction. **Śudre dwâdaśako dama iti** (p. 129 l. 6) *in (the case of) a Śudra the fine shall be twelve* &c. (p. 347. l. 5.) i. e. "with a half" is the supplement.

The Author cites **Gautama's** text as an authority for the rule "by a *Kṣhatriya* of a *Vaiśya* or a *Śudra*": **Brâhmaṇarâjaṇyawaditi**

(p. 129. l. 7.) *similar as in the case of a Brâhmaṇa and a Kṣhatriya (respectively)* (p. 347. l. 10.).

The Author quotes the text of **Manu** for (the passage) "In an abuse by a *Vaiśya* of a *Śûdra*". **Viṭśûdrayorewameveti** (p. 129. l. 8). a *Vaiśya* and a *Śûdra in the same manner* &c. (p. 347. l. 12.)

By the text "By true, untrue, or ironical statements" having stated the penalty for a *Nishthura* abuse, and having premised a penalty for an *aślila* (indecent) abuse, in the manner of the 'lion's gaze' treats of the *Nishṭhura* abuse, as the Author says **Punarnishṭhurâkshepamiti** (p. 129. l. 10). again a *Nishṭhura* &c.

---

## Yâjñavalkya Verse 208.

The Author points out by an illustration, a threatening by words: **Tava bâhumiti** (p. 129. l. 17.) *Your arm &c.* (p. 347. l. 19.)

---

## Yâjñavalkya Verse 210.

**Varṇinâmâkshepa iti** (p. 129. l. 25.) *in an abuse of men belonging to the varṇas &c.* (p. 348. l. 10.). The term *Varṇî* is used to indicate by implication the *Mûrdhâvaṣikta* and other *Jâtis*. For among the *Jatis* also *inter se* for abuses involving degradation, the middle *sâhasa*, and for an abuse involving the commission of a secondary sin, the lowest *sâhasa*; this is the result. For an abuse mutually between the *Varṇas* and *Jâtis* also the same is the punishment as mentioned before. Even among *Varnis* themselves without regard to the lower or higher, the punishments of the middle *sâhasa* and the like having been laid down elsewhere, also would happen to be the same, taking that as a standard.

---

## Yâjñavalkya Verse 211.

PAGE 91*. **Ye punarbrâhmaṇamûrdhâvaṣiktâdînâmiti** (p. 130. l. 1.) *Moreover of the Brâhmaṇa, the Mûrdhâvaṣikta and others &c.* (p. 348. l. 24.). The association of *Brâhmaṇas*, an association of *Mûrdhavaṣiktas*, and also an association of *Kṣhatriyas*, thus the word association goes with each distributively or collectively. In either case the same is the punishment.

Here ends the title of Law called the **Abusive Language.**

# Chapter XIX.

## ASSAULT.

Having mentioned the nature of Assault in pursuance of the text of **Nârada**, in pursuance of the same text also, the Author mentions also the varieties thereof : **Tasya twawagoraṇâdirûpakaraṇabhedeneti** (p. 130. l. 11). *Distinguished by the raising of the hand &c.* (p. 349. ll. 16–17). i. e. by reason of the different causes in the form of raising the hand &c. **Drawyarûpakarmatraiwidhyâditi** (p. 130. l. 16.) *by regard to the three-fold acts regarding articles &c.* (p. 349. l. 18.) i. e. by reason of the three-fold means causing the act.

This is what is (intended to be) said. An assault means disfiguring the body. There in this disfiguring of the body there are three (kinds of) acts viz. raising a hand, making sudden attack, and causing a wound ; and thus according to the difference in the act is its three-fold division. The body in which the disfigurement is caused is the object of the Act. Therefore, by (regard to) the lowest, middling or the best character of that object of the Act also, is the division three-fold. **Tasyâpi dṛshṭam**[1] **traividhyamiti** (p. 130. l. 12.) *There are three species of that also* (p. 349. l. 19.) Of that i. e. of Assault, according to the three causes viz. raising of the hand, striking unexpectedly and causing a wound, and by the stealing of the lowest, middling or best articles, in the respective order of the lowest, middling and best is the three-fold division ; thus is the order of words. In the raising of the hand and other acts, the lowest and the rest character should be determined in the order of their enumeration.

It may be asked, indeed, when on account of the difference of the means of attack, as also of the subject of the attack, a six-fold division is established, the statement about the three-fold[2] division is not proper, so the Author says : **Triṇyewa sâhasâniti** (p. 130. l. 13.) *are only the three Sâhasas &c.* (p. 349. l. 23.). There in (the case of) of this description for extirpating the thorny weeds i. e. in administering punishment of the guilty, that the punishment should be according to the guilt, the *Sâhasas* in the form of *Assaults* viz. the lowest kind of Assault, the middle kind of assault and the highest kind of assault, thus three (kinds) only are ruled. The meaning is this : Even if there be a difference in the object or the means, on account of their

1 In *Mitâksharā* the reading is different viz. तस्योपदृष्टं.

2 There is a mistake in the print here on page 91. l. 14. for विद्योक्तिरत्रुपपन्ना read त्रैविध्योक्ति.

characterisation as the lowest, the middling or the highest, the division is three-fold only.

Thus having stated the nature[1] of Assault together with its varieties, the Author mentions the common characteristics of the Abuse and the Assault : **Tathâ wâgdaṇḍapâruṣhyayorubhayoriti** (p. 130. l. 16.) *Moreover, when abuse or assault &c.* (p. 349. l. 27.). **Baddhe vairânusandhâturiti** (p. 130. l. 17.) *after the quarrel has commenced, he who follows up &c.* (p. 349. l. 31.). i. e. he who carries the memory of a past quarrel.

**Vidhiḥ panchavidhastûkta iti** (p. 30. l. 26.). *A five-fold rule of procedure has been laid down* &c. (p. 350. l. 5.) i. e. of these two, i. e. of the (offences of) Abuse and Assault, five-fold i. e. of five varieties, is the procedural law laid down.

The Author points out these five rules: **Pâruṣhye satityâdinâ** (p. 130. l. 21.). (Even) when under an excitement an altercation has commenced, of the two who are excited, he who forbears, is respected. This is the order of words.

**Dwayorâpannayoriti** (p. 130. l. 23.) *when both parties are implicated &c.* (p. 350. l. 16.). Equally implicated i. e. involved in a quarrel, of the two, he, moreover, who follows up the attack, that alone shall receive punishment, whether he first started[2] or afterwards retaliated. This is the meaning.

**Śwapâkaṣhandheti** (p. 130. l. 25.). *If a śwapâka ṣhandha &c.* (p. 350. l. 17). The meaning of this: In the case of persons beginning with *śwapâka* and ending with the *dâsas* immediate corporal punishment is alone the rule. In whose case ? In regard to the (offences against) the teacher, the preceptor and the *antaga*[3], when the limit has been transgressed. He who resorts to the end i. e. the last order is an *antaga* i. e. *yati*[4]. The word *cha* 'and' indicates a different order. Therefore, the order of words comes to be thus: in the case of

1 On p. 91. read line 18 thus. एवं दण्डपारुष्यस्वरूपं सभेदमभिधाय &c.

2 On p. 71 l. 23. for प्रथमप्रवृत्ते, read प्रथमप्रवृत्तो वा ।

3 It appears there is a difference in the readings of the Mitākshara of this passage. The reading adopted in these series is गुर्वाचार्यनृपषु च (see. Mit. p. 13. l. 26. and Transl. p. 350. l. 19.) The Bālambhaṭṭi has also the same reading. The reading in the Subodhini, as in some editions of the Mitākshara also is गुर्वाचार्यांतगेषु च. There the word अंतग has been explained in two ways.

4 For पतिः read यतिः

those who maintain themselves by killing, in the case of *śwapâka* and others and in the case of an elephant-driver, a *vrâtya* or a slave, immediate corporal punishment alone is the rule; in regard to the teacher, preceptor and the *antaga,* while there is a transgression of limit.

Or there is an entirely different comment. He who goes to the end i. e. death, is an *antaga* ; the *anatga* of the teacher, and the preceptor is one who causes the death of the teacher and the preceptor i. e. their enemy. For these, the *antagas* of the teacher and the preceptor i. e. the enemies of the preceptor and the teacher.

From that, this is the order. In the case of persons beginning with the *śwapâka* and ending with the enemies of the teacher and the preceptor immediate corporal punishment is alone the rule. In what (conditions)? When they transgress their limit. The word 'they[1]' is to be obtained by a consideration of the import of the next verse.

Now the Author introduces the original verse: **Evambhûteti** (p. 131. l. 1.) *thus described. &c.* (p. 350. l. 28.)

---

## Yâjñavalkya Verse 212.

PAGE 92*

**Kâraṇaprayojaneti** (p. 131. l. 5.) *by regard to the relation of causes &c.* (p. 351. l. 8.) i. e. containing a consideration of the cause, the occasion &c. The context is with each.

**Sâdhanaviśeshaṇeti** (p. 131. l. 7 ) *particular means &c.* (p. 351. l. 12.) i. e. the special means such as ashes and the like to be presently mentioned.

---

## Yâjñawalkya Verse 213.

**Karṇavitdûshiketi** (p. 131. l. 13.) *ear-wax, rheum of the eyes &c.* p. 351. l. 24.). Ear-wax i. e. the excreta in the ear. Rheum of the eyes i. e. the excreta of the eyes.

The Author expounds the portion in the original text viz. "double that" &c. **Tata[2] iti.** (p. 131. l. 14.). Than that a double fine, is the order of words. Anticipating an inquiry, than i. e. than which ? the Author says **Pûrvâddaśapaṇâditi** (p. 131. l. 14.). *Mentioned before viz. ten*

---

1 They : the stress here is on the expression सत्सु the force of the locative absolute being, that when these are engaged in the act &c.

2 There is a mistake in the print of the Mitâksharâ at 131. l. 1. for एवं भूदण्ड &c. read एवंभूतदण्ड &c.

*paṇas* (p. 351. l. 27.) Under the rule[1] "or optionally in the case of nine beginning with पूर्व" the pronominal indicative is optional.

**Purîshâdisparśana iti** (p. 131. l. 15.) *in an assault by feces &c.* (p. 351. l. 29.) i. e. when feces or the like have been made to touch (the body).

**Chhardimûtreti** (p, 131. l. 15.) *vomit or urine &c.* (p. 351. l. 31.). The meaning of this : In an assault upon another's limbs with vomit or the like, a four-fold penalty should be imposed i. e. by relation to ten *paṇas* four times would be forty *paṇas*. **Kâyamadhye** ( p. 131. l. 16.) *in the middle extremity of the body* (p. 351. l. 32.) i. e. above the navel and below the mouth, for an asault with vomit &c. the penalty shall be six times. By deduction, the four-fold penalty mentioned before should be understood to be for an assault (on the body) below the navel. Six times is sixty *paṇas* ; eight times, eighty *paṇas*.

The Author expounds the portion "Thus against one of an equal class" : **Evambhûtapûrwokta iti** (p. 131. l. 18.) *Thus mentioned before &c.* (p. 352. l. 1.) In all cases of others' wives. In the case of one superior in learning and conduct than oneself for an assault with ashes &c. twice ten *paṇas* i. e. twenty *paṇas*, while for an attack with an impurity &c. twice twenty *paṇas* i. e. forty *paṇas* shall be the penalty. So the Author says, **Parabhâryâsu châviśesheṇeti** (p. 131. l. 18.). *In the case of wives of others...without differenciation* &c. (p. 352. l. 3.) i. e. without distinction as to whether of the same *varṇa* or of a superior *varṇa* or an inferior *varṇa*. **Panchapaṇo daśapaṇascheti** (p. 131. l. 20.) *five paṇas or ten paṇas* &c. (p. 352. l. 9.) i. e. for an assault with ashes touching the body.

---

## Yâjñavalkya Verse 215.

**Śreyâṃsamiti** ( p. 131. l. 22.) *one of a higher class* (p. 352. l. 27.) of the best caste i. e. of the twice-born class. The Author extends the aforesaid rule elsewhere also: **Vaiśyasyâpîti** (p. 131. l. 29.) *or of a Vaiśya even* (p. 351. l. 27.). In the case of a *vaiśya* also being after a *Kshatriya*, and thus being inferior, born lower and relatively to him

---

1 पूर्वादिभ्यो नवभ्यो वा, Pāṇini VII. 1. 16. The suffixes स्मात् and स्मिन् are optionally substituted for the Ablative and the Locative endings, after पूर्व and eight that follow it. Vide Panini I. I. 34. पूर्वपरावरदक्षिणोत्तरापराधराणि व्यवस्थायामसंज्ञायाम्. Thus पूर्व, पर, अवर, दक्षिण, उत्तर, अपर, अधर, स्व and अन्तर will here optionlly पूर्वात् or पूर्वस्मात्......उत्तरात् or उत्तरस्मात्......अन्तरात् or अन्तरस्मात् ; have so also पूर्वे or पूर्वस्मिन्......उत्तरे or उत्तरस्मिन्......अन्तरे or अन्तरस्मिन्.

a *Kṣhatriya* being upper and therefore superior, by a parity of the rule regarding a *Śûdra,* here also is this very punishment of the lopping off of a limb. This is the meaning.

Indeed, what would be the punishment for an offence of throwing ashes, mud, dust &c. ending with the spit by a member of a lower towards one of a superior order ? Anticipating this question, the Author says: **Bhasmâdisaṃsparsane tu iti** (p. 132. l. 20.). *In cases of assaults by means of ashes &c.* (p. 353. l. 7.). This is the import : Where for an assault with ashes, mud, and dust, in regard to one of the same *varṇa* the penalty is ten *paṇas,* there in an assault by a *Kṣhatriya* towards a *Brâhmaṇa* being an offence against a higher class, a two-fold i. e. twenty *paṇas* is the punishment. With the same means when committed by a *Vaiśya* in regard to a *Brâhmaṇa,* three-fold i. e. thirty *paṇas* is the punishment. In the case of an assault by means of an impurity and the like and committed by a *Kṣhatriya* against a *Brâhmaṇa* twice that of twenty *paṇas* the punishment mentioned there, i. e. forty *pâṇas* would be the punishment, and *for an assault by a Vaiśya* by the same means against a *Brâhmaṇa* thrice twenty *paṅas* i. e. sixty *paṇas* is the punishment.

## Yâjñavalkya Verse 216.

**Parasparawadhârthamiti** (p. 132. l. 9.) *with the object of striking each other &c.* (p. 353. l. 24.) i. e. In the case of all the *varṇas* when lifting a weapon for striking each other.

---

## Yâjñavalkya Verse 218.

**Twagbhedakaḥ Śataṃ dadyât iti** (p. 132. l. 21. *He who breaks the skin shall be fined a hundred* &c. (p. 354 l. 20). He who breaks the skin and also exhibits blood, alone is to be punished with a hundred, and not one who merely breaks the skin, since the word *cha* 'and' indicates cumulation.

If it be argued that a fine of sixty-four *paṇas* has been mentioned by **Yâjñavalkya** at the sight of blood while a hundred has been mentioned by **Manu**, so there is a mutual conflict, the answer is no, it is not so. For a wound to another on a vital part exhibiting blood, a hundred *paṇas* is the punishment; elsewhere sixty-four ; thus it is to be distinguished.

---

## Yājñavalkya Verse 219.

PAGE 93 It may be said, indeed, as compared with the cutting off
30 of an ear, nose, and the like, the punishment for the

breaking of a hand, foot or tooth is small, and a uniform punishment of the middle *sâhasa* for all would be improper, so the Author says : **Anubandhâdineti** (p. 132.l. 26.) *by regard to the result of the act &c.* (p. 354. l. 30.) *Anubandha* means resulting of an injury vide **Amara**[1] "when injury is caused, it is called *Anubandha*". By the term *Ādi*[2] "and the like" is included facility in regard to movements. In the case of the cutting off of the ear or nose and the (consequent) appearence of scars an aggravation of the offence is visibly established. In the case of these being the limbs directly of the body, by a breaking of these, there would be a difficulty in ordinary movements, and the requirements of the body would not be had, and thus there would be an aggravated offence. In the case of the breaking of the teeth, there would be difficulty in eating and thereby indirectly a shortening of life and thus the aggravation of the offence. Thus by regard to the results produced the similarity between the several causes viz. the breaking of a hand, a foot or tooth should be understood. This is the meaning.

## Yâjñavalkya Verse 221.

Thus having stated the penalty in regard to offences by members of the same *Varṇas* the Author applies that punishment to offences between higher and lower *Varṇas* similarly as has been laid down in the case of Abuse. **Prâtilomyeti** (p. 133 l. 5.) *of inferior classes &c.* (p. 353. l. 24.). The distinction is that in an offence against a superior there would be an enhancement of the penalty, while in an offence against a lower order there would be a reduction in the penalty.

It may be said that while commenting upon the verse[3] "Which causes injury to a *Vipra* must be cut off" this sense has been stated by the clause [4]"In cases of assaults by means of ashes &c"; and the same is being stated here again, thus there is a repetition. The answer is, no, not so. For special causes of offences against the higher class by means of ashes &c. in connection with that very offence have been stated on the occasion of the penalty for offences against the higher class. While here, the rule for determining the punishment is entirely the same as stated in connection with the offence of Abuse in regard

1 III. 3-98.

2 i. e. in the Mitāksharā, it is stated that the point of similarity is in results &c. of the act. Whatever retards, impedes or otherwise affects the facility as to movements &c. is responsible as a cause of the incapacity.

3 Yājn. II. 215.

4 Mitākshara p. 353. l. 7.

to offences both against the higher and the lower *Varṇas* being mentioned for the elucidation of the beginner; thus there is no fault of repetition.

## Yājñavalkya Verse 223.

The text next stated has an appropriate context. With a view to indicate this, the Author says **Paragâtrâbhidroha iti** (p. 133 l. 15) *for assaults upon the limbs of others &c.* (p. 356. l. 13). This is the meaning: Having stated the penalty for offences against internal possessions such as hand, foot &c., in course of the context, the punishment is being stated for attacks against external possessions such as house &c.

## Yâjñavalkya Verse 225.

The Author anticipates an objection in regard to the interpretation stated before and refutes it: **Kathamiti chediti** (p. 124. l. 1.). *If it be asked how? &c.* (p. 357 l. 25). With a view to give an effective reply, the Author follows the line of what has been established: **Aparâdhagurutwâditi** (p. 134 l. 1). *By regard to the heinousness of the offence. &c.* (p. 357. l. 26.). Then what? So the Author says: **Tatra cha aśruteti** (p. 134. l. 2.) *there, which have not been specifically mentioned &c.* (p.357.l.29.)

This is what is (intended to be) said: By the text "beginning with the *paṇas* and upwards" the double has been pronounced. Next to the double number which has been stated while determining the higher number, the question would be whether it should be by assuming the number three, not mentioned before, and having an attribute or by assuming the number four which could be had by a recurrence of the number two mentioned before. Thus, moreover, by assuming the higher figure to the three to be the next higher there could be a figure not mentioned before, and also one having an attribute[1] and thus a higher one, while by assuming a higher figure by accepting four, there would be a repetition of what has been stated before and which itself is the attribute, and thus a lower one. Moreover, those conversent with the Rules of Law, consider that the assumption of the attribute is better than that of the possessor of an attribute. And, therefore, it is that the rule containing a repetition of the double already mentioned is better.

## Yâjñavalkya Verse 226.

**Tâḍanalohitasrâvaṇâditi** (p. 134. l. 2.) *for beating or drawing out blood or doing similar acts &c.* (p. 358. l. 8.) i. e. for reasons stated in the text. "For causing pain, drawing blood" and the like.

---

## Yâjñavalkya Verse 228.

**Chaityâdishu jâtânâmiti** (p. 134. l. 21.) *growing on a sacrificial place &c.* (p. 359. l. 7.). Here the distinction is that for cutting off the branches, or breaking the trunk, as also for cutting off the entire tree together with the roots, the punishment shall respectively be forty *paṇas*, eighty *paṇas*, and a hundred and sixty *paṇas*.

---

## Yâjñavalkya Verse 229.

PAGE 94. * **Pûrvoktâddanḍâdardhadanḍo veditawaya iti** (p. 134. l. 30.) *a fine half of that mentioned before must be understood &c.* (p. 360 l. 6) i. e. of the punishment mentioned in the present connection viz. twenty, forty and eighty *paṇas*, half i. e. ten, twenty and forty *paṇas*.

Here ends the Chapter on Assault.

---

# Chapter XX

## SÂHASAS OR HEINOUS OFFENCES.

---

## Yājñavalkya Verse 230.

The expression in the orginal text viz. "Common property" is extensive. Therefore by that is intended another's property also. Intending this, and desiring to point out a cause for the extension, the Author states the intended meaning: **Yatheṣhṭamiti** (p. 135. l. 4.) *at will &c.* (p. 360. l. 17.).

This is the import: As common property cannot[1] be disposed of at will, so also is the case of another's property. Taking away that also becomes a *Sâhasa*.

---

1 There is a mistake in the print on p. 94. l. 9. for यथेष्टविनियोगार्हत्वं read न यथेष्टविनियोगार्हत्वं.

**Râjadandam janâkrosam weti** (p. 135. l. 6.). *Royal sanction or the protest of the people &c.* (p. 360. l. 21.). The meaning is that transgressing the fear of punishment by the king as also the fear of a popular uproar. The State authority as well as ordinary people. (Make up the compound word)—the State authorities and ordinary people ; in the presence of these. Thus is the compound ( to be understood).

It may be said, indeed, the definition of a *Sâhasa* viz. "what is done by force is a *Sâhasa*" is indistinguishable even from theft and like acts, and thus being part of these, a separate mention of this chapter is improper. Anticipating this, and intending an answer viz. yes, let this definition be closely connected with theft &c. still owing to other adventitious differences, this chapter differs from others, and thus a separate mention is proper, the Author says : **Tadidam sâhasamiti** (p. 135. l. 9.). *The Sâhasa of this description &c.* ( p. 361. l. 7.)

This is the import : What is done by force is a Sâhasa. This is a general characteristic,[1] and therefore is closely woven into theft and all like acts. Here, however, force as also arrogance are the special features. Marked by this very special characteristic, and known by the term *Sâhasa* may be sought even in theft and the like acts bearing this special characteristic.

**Tasya cheti** (p. 135. l. 12.) *of this also &c.* (p. 361 l. 11). Of this i.e. of the *Sâhasa*. **Prathamâdibhedeneti** (p. 135. l. 12.). *Division into the lowest and the others &c.* (p. 361. l. 11.) i. e. by the divisions into the lowest *sâhasa*, the middling *sâhasa*, and the highest *sâhasa* ; these lowest *sâhasa* &c. are the names of acts, and not names of the punishment. **Tenaiveti** (l 12.). *By the same. &c.* "By the same" i.e. by **Nârada.**

**Bhangâkṣhepa iti** (l. 14.). *Destroying, reviling &c.* (p. 361. l. 16.) Destruction i. e. breaking. Reviling i. e. finding fault. Disfiguring i. e. causing emaciation. By the term Ādi-"and the like"-are incorporated cutting and similar other acts. **Etenaiva prakârenaiveti.** (p. 135. l. 15.). *In the same way &c.* (p. 361. l. 18.). By the same i. e. by destroying and the like.

**Kriyâ** (l. 17.) *crime* (l. 24.). The action i. e. the act. **Prathamsyetyâdinâ** (l. 16.) *Beginning with the first &c.* (l. 25.) **Samastâ wyastâ weti** (l. 20.) *cumulatively or disjunctively. Cumulatively* i. e. all jointly. *Disjunctively* i. e. separately.

---

1 सामान्यलक्षणं.

After mentioning the special rules stated in **Another Smṛti** the Author resumes the context : **Tatra paradrawyâpaharaṇarūpa iti** ( p. 135. l. 21.) *in the form of deprivation of another's property* (p. 361. l. 36.). **Yaḥ punaḥ sâhasaṇkṛtweti** (l. 23.) *He, however, who having committed a sâhasa* &c. (p. 362. l. 5.). The meaning is that after a denial has been proved by witnesses &c. he deserves a fourfold punishment, and not (as for) a mere denial.

It may be said, indeed, for offences like the lowest *sâhasa* and the like, hundred *paṇas* and the like punishments have been prescribed before. Here a punishment either double or four-fold of the original is being laid down. Therefore on account of this mutual contradiction does it lack authoritativeness, or in the alternative, by accepting its authoritativeness as an alternative, is an option—which is vitiated by eight faults-to be resorted to ? Anticipating this, the Author says : **Etasmâdeveti** (l. 24.) *from this very &c.* (p. 362. l. 8.). This is the import: There is neither authoritativeness nor an option. But on the other hand, a particular rule having the capacity of qualifying a general one, and the rule as to the double or four-fold having been laid down in a special case of offence of a forcible deprivation, by a special clause, the clause laying down a general rule is qualified.

---

## Yâjñavalkya Verse 231.

**Anubandhâtiśayâditi** (p. 135. l. 231.) *on account of the aggravation of the offence &c.* (p. 362. l. 23). i. e. by reason of the excess of force, the guilt would be aggravated.

---

## Yājñavalkya Verse 232.

PAGE. 95. * **Arghyâkrośeti.** (p. 136. l. 1.) (who) *abuses the venerable &c.* (p. 362. l. 26.) To a venerable person, one who offers abuse or shows disobedience. One who does these two acts is one who does it. Thus is the compound (to be understood.)

**Te sarve panchâśaditi** (p. 136. l. 8). *all these fifty &c* (p. 363. l. 12.) The meaning is that all shall be severally punished with a fine of fifty *paṇas* each. The rest is easy to understand.

Thus ends the Chapter on *Sâhasa*.

Now an **Incidental Chapter** intituled, **the Rules of Punishment for the washermen and like others.**

**Tatsadṛśâparâdheshwiti** (p. 136. l. 27.) *for similar offences &c.* (p. 364. l. 164). Offences equal (in gravity) as a *sâhasa*, being committed by the washers of clothes such as wearing[1] the clothes and like others. In regard to these offences, a punishment for the perpetrators thereof is being laid down. This is the meaning.

---

## Yâjñavalkya Verse 238.

**Awakrayancheti** (p. 137. l. 2.) *or hires out &c.* (p. 364. l. 22). Or who hires out—is the connection with what follows. The Author indicates the nature itself of a hiring out: **Etâvatkâlamiti** (p. 137. l. 2). *For such a period &c.* (p. 364. l. 23). i. e. in such a manner that it becomes a thing let out.

The Author expounds the collection of texts of Nârada viz: "An eighth part of its value &c.": **Ashtapaṇakrītasyetyâdinâ** (l. 10). *purchased for eight paṇas &c.* (p. 365. l. 11.) Without an interval of time it being impossible to mention reduction below an eighth and the like, the mention of eight *paṇas* as the price is only with a view to indicate a direction. **Ashṭamabhâgonaṃ** *minus an eighth part* i. e. seven *paṇas* **Pâdonamiti** *less by a quarter i. e.* reduced by a fourth part.

The Author expounds the portion "After the depreciation of a half": **Tataḥparaṃ pratinirṇejanamiti** (p. 137. l. 12.) *Thereafter...... for each wash &c.* (p. 365. l. 15-17). The meaning is this: Of a cloth purchased for eight *paṇas*, on the fourth wash, if lost, a reduction by half of the original price i. e. of four *paṇas*—occurs. Of one lost after the fifth wash or subsequently a reduction more than a half takes place. In such a position, on it being lost at the fifth wash, the price would be less by a quarter of the residual price of four *paṇas* i. e. three *paṇas*. At the sixth wash, moreover, on it being lost, a quarter less of the residual rule for three *paṇas*, and thus by as much period the cloth gets old, by so much should the price be paid reduced by a fourth part.

Tatteredness occurs when the ends get thinned, so the Author expounds the portion "In the case of a tattered cloth, there is no rule"; **Jīrṇasya punariti** (p. 137 l. 13.) *of a tattered cloth, moreover &c.* (p. 365. l. 18.) This is the meaning: In the case of the loss of a tattered cloth, the wish of the arbitrators alone is the standard for determining

---

1 The other reading is परवस्त्रवसनादयः—wearing others' clothes and like others.

the price to be paid, there would be no application of the text as stated before, nor shall one's own option have a scope.

Above has been stated that the Author mentions a penalty for washermen and others. The Author points out the punishments indicated by the term *Ādi*—" and others," by fifteen[1] verses commencing with "In a dispute a father and son" and ending with "Adding to the cost of the commodity".

---

## Yâjñavalkya Verse 239.

The Author desires to indicate that one who, although he is competent to prevent a quarel, does not stop a quarrrel at such a place, but undertakes to give testimony, shall also be punished-so he says : **Pitâputrayoriti** (p. 137 l. 16) *Between a father and a son* &c. (p. 365 l. 24) **Dampatyâdishwapiti** (l. 18). *In the case of a husband and wife, or like others also &c.* (p. 365 l. 30) i. e. by the term *Ādi* "like others" are included the preceptor and the pupil and others following.

---

## Yâjñavalkya Verse 242.

**Tiryagâdishu Mūlyaviśeṣheṇeti** (p. 138 l. 3). *In the cases of lower animals &c. by regard to the value &c.* (p. 367 l. 12). The meaning is that in the case of lower animals, by regard to the particular value, in the case of men, by regard to the particular *varṇa* such as that of a *Brâhmaṇa* and the like, and in the case of royal personages by regard to the particular degree of contiguity to the king, the smallness or heaviness of penalty is to be determined.

---

## Yâjñavalkya Verse 243.

The Author states the meaning of the expression "before the decision (in his case) is arrived at": **Anirvṛttawyahâramiti** (p. 138 l. 7.) *before the trial was concluded* (p. 367 l. 22).

---

## Yâjñavalkaya Verse 244.

PAGE 96*

If the commodity abstracted by a false weight be more or less than an eighth part, an increase in the amount of the fine or decrease over two hundred should be determined, so the

---

1 i. e. from verse 238 to 253.

2 See Bālambhaṭṭi which makes this further clear : वीप्सा तु अवश्यकर्तृतया यावज्जीवं कर्तव्यतया च नित्यतां बोधयति ।

Author says. Aparhatasya punariti (l. 12.) *of the portion abtsracted &c.* (p. 368. l. 2).

---

## Yājñavalkya Verse 246.

**Vikreyasyapâditasâdṛśyasyeti** (l. 25) *commodity offered for sale... which is made to resemble &c.* (p. 369 ll. 1–3). This is the import : i. e. eight times the amount of the price of the commodity (offered) for sale, such as *e. g.* a crystal which was made to wear the appearance and lustre of a coral by the imparting of excessive lustre.

---

## Yājñavalkya Verse 247-248.

The Author expounds the verse "For.......the fraction of a...*paṇas* fifty &c" **Kṛtrimakastûrikâderityâdinâ** (p. 139 l. 4). *The actual price of the counterfeited musk or other article &c.* (p. 369. ll. 17–18).

---

## Yâjñavalkya Verse 251.

**Pancharâtre pancharâta iti** (p. 139 l. 22). *once in (every) five nights &c.* (p. 370 l. 22).

The meaning of this: The king should fix in his presence the prices of the above mentioned commodities with fluctuating values at the interval of five days each, while of steady values at the lapse of a fortnight each. Here by the repetition it should not be supposed that after ten days or after a month is over the prices are to be fixed, but moreover, after an interval of five nights, after a fort-night &c. Thus by its jointly and necessarily being required to be done, it indicates its permanence[1], after the manner of the maxim "every Vernal season the *jyotishtoma* (should be performed)".

---

## Yâjñavalkya Verse 252.

It has been stated that the price should be fixed by the king ; and that by the tradesmen also, on a commodity available in one's country, a profit of five *paṇas* for a hundred *paṇas*, while for one obtained from another country a profit of ten *paṇas* should be taken. In this state of things if it be asked in what manner

---

1 See Pâṇini V. 3—14. इतरेभ्योऽपि दृश्यन्ते ।

should the king fix the price ? In the text stated above, the mode of fixing the price of a commodity obtained from another country being intended to be stated, the method of determining the price, fixed under that rule the Author points out in the case of commodities obtained in one's own country : **Evancha yathârgha iti** (p. 139 l. 29) *And thus...on the regulated price &c.* (p. 371 l. 10).

---

## Yâjñavalkya Verse 253.

**Panyasyopari samsthâpyeti** (p. 140 l. 2) *Adding......to the cost of the commodity &c.* (p. 371 l. 15). It may be said, indeed, here the method of determining the price in general is contemplated, therefore the mentioning of another method of determining the price of a foregin commodity is improper, the answer is, no, not so. By stating the reason viz. "charges incidental to the commodity" the other kind is inferrable. This is the import. Generally, incidental charges being possible only in a commodity while it is being brought from a foreign country, it is properly said that the reference is to that.

Thus ends the Incidental chapter intituled
**the Rules of Punishment for Washermen and like others.**

---

# Chapter XXII.

## NON-DELIVERY AFTER SALE.

---

**Charâcharabhedeneti** (p. 140 l. 10) *according as they are movable or immovable &c.* (p. 372 ll. 3–4). *Chara* means movable, and *achara*, immovable. **Shadvidhastasya tu budhairiti** (14 l. 11) *of that...six-fold by the learned* &c. (p. 372 l.7). "Of that" i.e. of the commodity. "By the learned" i. e. by **Manu** and others. Of delivery, as also of non-delivery, the set of rules, series of regulations, i. e. the mode of performance, has been stated to be of six kinds. This is its meaning. "The form *rûpataḥ*" is under the rule that the suffix तस् (tas) is used in all cases, and therefore it is used in an instrumental sense i. e. by the form. That Instrumental also is used in an implication ; with this view the Author says, **Rûpataḥ panyânganâditi** (p. 140 l. 14). *'According to its beauty such as a prostitute &c.* (p. 372 l. 13).

Now the Author introduces the original text : **Ityetaditi** (l. 15). *Thus these &c.*

## Yâjñavalkya Verse 254.

PAGE 97* In the expression "shall be compelled to deliver together with interest", here, the increase is possible in four ways. It is thus: when, as compared with the time of the sale at a later time the commodity bears a less, equal, or an inflated price. This in the case when the price is less e. g. the commodity having been purchased at the rate of five *panas*, at another time it is obtainable[1A] at four, the price being less, there is an increase in the commodity. At such a time, the commodity should be caused to be delivered to the purchaser at four *panas* only, thus this is one of an increase or interest. In such a case popularly it is called a commodity with a less price.

As compared with the time of the purchase, when the price is equal an increse may occur in two ways. When having purchased the commodity in the town &c. at the market place or the like, one sells it at another place such as in his house or the like, whatever profit occurs, that would be one kind of increase. Or, the money with which the commodity was purchased, that very money may carry an interest against time under the text[2]: "An eightieth part (of the principal) is the interest (allowed) every month when the debt is (secured) by a pledge. In other cases, it may be two, three, four, a five per cent, respectively, according to the order and class (of the debtor)"; that is another increase.

While in the case of a larger price, when a commodity had been purchased at five *panas*, in course of time, was obtainable for six or ten, then in the case of clothes, houses and others, the enjoyment thereof in the form of wearing, occupation and the like, that enjoyment itself is profit and is (an instance of) another increase.

This is what is (intended to be) said: When the price of the commodity becomes less, there is one increase, is the first kind. The price being equal in the same region where the sale is made at a place other than that of the purchase, and a profit is made, that is the second. When the amount of the price of the commodity is advanced as a loan, an increase every month is the third. In the case of an inflation of the price, the rise of the commodity is itself the fourth. In all these four cases the commodity should be caused to be delivered together with an increase according to the wish of the purchaser under the text

---

1 A लभ्य is a better and correct reading.

2 of Yâjnavalkya II. 37.

mentioning that "when after taking the price, delivery is not made to the purchaser" &c.

The Author mentions, presently, the first case : **Tachcha paṇyaṃ yadityâdinâ** (p. 140 l. 19) *and if that merchandise &c.* (p. 372 l. 26). The meaning is this : Having sold at five *paṇas*, and even accepting the price, if the seller does not deliver that commodity even when requested by the purchaser, and in course of time it is available for *four*, or even for *one*, then having given to the purchaser at the (altered) price of the later time, the balance of the price received before also should be paid over by the seller.

The Author states the second case : **Yadâ mulyarhâsakṛta iti** (l. 21) *when, on account of a reduction in the price &c.* This is what is (intended to be) said: At the time of one's purchase, as well as at another time if the rate of the price be the same, the commodity should be delivered together with the profit which accrues by purchasing from the market or other place and selling at a house &c.

The Author mentions the third alternative **Dwikaṃ trikamityâditi** (p. 2 l. 23) *two, three, or the like* (*per hundred*) *&c.* (p. 375 l. 1).

It has been stated that in the case of a fall or evenness in the price the commodity should be restored together with this increase. There for both these alternalives also the Author cites a text of **Nârada** in support : **Arghascheti** (l. 24) *If the market value &c.* (l. 3). The meaning of this : By the word "If" is indicated another alternative. When the price is lower i. e. the price of the commodity falls down' and the commodity is deflected in price, then the commodity should be delivered at the lowered price together with interest. If the price is not lowered, and there is evenness of the price then even he should pay with interest. Here the delivery with interest is to be observed in the same manner as mentioned before. This rule is only in regard to local traders residing in the same country. Of those who travel abroad, the foreign profit should be determined in the manner which will be stated hereafter.

The Author mentions the fourth rule : **Yadâ twarghamahatweneti** (l. 26) *when however on accouut of a rise in the price* &c. (p. 373 l. 8). This is the import : If a commodity which, at the time of the sale was available at five *paṇas* is after a lapse of time sold at six or ten, then after causing the purchaser to be paid the price (prevailing) at the time of the sale, he should also be paid the price for the enjoyment of it for the period commencing from the time of the sale up to the time of

delivery. Not the delivery of the enjoyment itself, as that is not possible in the case of all commodities : **Jangamasya vikriyâphalamiti** (l. 28) *of the movable...the profits arising from it &c.* (p. 373 l. 15). 'Of movables' i.e. of a *Dâsi* or the like. 'Profits' i.e. the price of service &c. The Author states the meaning of the word "*kṣhaya*" in the text of **Nârada** : **Vikreturupabhogha iti** (l. 28.) *Possession by the seller &c.* (p. 373 l. 16). There the reason is "from the point of view of the buyer" ; since it has been stated in "As he did not deliver (it) after it had been sold (by him)". The meaning is that here in this text, **Nârada** having once declared that by demolishing a wall there would be a loss to the seller, stating again that he should be compelled to pay the loss would be tautologous. The Author expounds the portion of the original text viz. "Or the foreign profit to one who has come from a foreign country" : **Yadâtwasâviti** (p. 140 l. 31) *when however such a &c.* (p. 373 l. 23). **Anuṣayâbhâva iti** (p. 141 l. 2). *In the absence of a rescission* &c. (l. 29). By Rescission is to be understood that described by **Manu**[1] viz. "Sold at an improper price &c." "He whose rescission shall take place, that man within ten days shall deliver that commodity and take back &c." is the remainder of the verse.

PAGE 98*.

---

## Yâjñavalkya Verse 255.

**Tatkreturevâsau hâniriti** (p. 141 l. 8). *The loss will be on its purchaser alone* &c. ( p. 374 l. 10 ). *i.e.* of that *i. e.* of the commodity, the purchaser.

---

## Yâjñavalkya Verse 256.

In the text "the loss shall be of the seller alone" desiring to indicate the force of the word 'alone', the Author says : **Atonyadaduṣhtamiti** (l. 12). *Therefore another unblemished commodity &c.* (l. 18).

---

## Yâjñavalkya Verse 257.

The Author points out the subject matter of the rule as to the penalty, stated in the passage[2] "Having finished a topic which in-

---

1 Ch. VIII. 222.

2 See Mitâksharâ text p. 140 l. 8. Tr. p. 371. l. 24.

cidentally arose" : **Sarvaschâyam vidhiriti** (l. 21). *The whole of this law &c.* (p. 375 l. 1). This is the import : i. e. the meaning is that it applies to where after receiving the price of a commodity as settled by mutual agreement, the seller delivers the commodity to the purchaser. **Niyamakâriṇaḥ samayâdṛta iti** (l. 22). *excepting such special agreement as may have been entered into &c.* (p. 375 ll. 4–5). The meaning is that where without paying the price an agreement has been reached that if such be the price of this commodity it shall be yours, not mine, that is called a special agreement (*samayah*), without that, there is no wrong in receding from a sale: **Na vikreturavikraya iti** (l. 23) *no rescission is to be imputed to the vendor* (p. 375 l. 9).

That is, as has been stated in the number of texts commencing[1] with "He who having received the price of a thing &c." and ending with "When it had already been sold to another". **Kritânusayaswarûpamiti** (l. 24). *rescission of a purchase &c.* (p. 375 l. 12) i. e. it should be understood as the one expounded before after the chapter on resumption of profits.

---

## Yâjñavalkya Verse 258.

**Parîkshitakrîtapaṇyânâmityadiḥ** (l. 27.) *i. e. commodities purchased upon inspection &c.* This is the import : Having purchased a commodity which has no blemish, at four *paṇas*, no rescission should be made by a purchaser who during the interval for a rescission laid down in law does not know of an increase in the price e. g. at three *paṇas* or the like ; similarly a rescission must not be made by the seller also who does not know of an appreciation in the price e. g. at five *paṇas* or the like.

**Paṇyawaiguṇyanibandhaneti** (p. 142. l. 1) *on account of a defect in the commodity &c.* (p. 376. l. 6). *i. e.* by reason of a blemish in the commodity. **Ityâdinâ darśita iti** (l. 1.) *has been indicated &c.* (l. 5.) The meaning is that the rule has been set out in the Chapter on the Rescission of a Purchase.

It has been stated by the affirmative and the negative method of reasoning that a rescission may be made at the knowledge of an increase or decrease in the price as compared with the price at the time of the purchase and that it must not be made without such knowledge.

---

1 Yâjn. Verses 254–257.

In support of these (two), the Author points out a net inference: **Tadanayâ wâchoyuktyeti** (l. 2). *Therefore from this text &c.* (l. 6.)

The Author points[1] out another reasoning in the[2] form of an illustration: **Yathâ paṇyaparîkṣheti** (l. 2) *As......*the *testing a commodity* etc. (l. 9.) If under the rule[3] regading inspection, viz "The purchaser shall examine the article &c." while an examination is being made, faults exist then a rescission shall occur, and thus faults are a cause for a rescission. This is the meaning.

Thus ends the Chapter called **Non-delivery after Sale.**

---

# Chapter XXIII.

## TRADING BY PARTNERSHIP.

---

The word "of traders" in the original text, is indicative of others also by an extended application; thus by the term trader are also included even actors and the like. With this object, the Author says: **Ye waniknaṭanartakaprabhṛtayaḥ** (p. 142. l. 13). *such traders, actors, dancers and others &c.* (p. 377. ll. 11–12.).

This is the meaning: When five combine together and trade or any other thing is made, there the contribution by one being five *niṣhkas*, by another ten, and by still another fifteen, thus pooling together the money contributions, without any express agreement, while the undertaking is carried on with a zest[4], the original amount of thirty *niṣhkas* has become thirty-six by or on account of "profit made" he whose original was five, shall take from the profit in the form of the *niṣhkas* one *nishka*, he however, whose original (amount) was ten, two *niṣhkas*, he, moreover whose original contribution was fifteen, three *niṣhkas*, thus (each) should take according to the original amount of each. Similarly, if there be a loss, a reduction in the original amount is to be made.

PAGE 99*

The Author states the import of the text "or according as was determined by special agreement": **Yadwâ pradhânaguṇeti** (p. 142. l.

---

1 A on. p. 98. l. 22. add दर्शयति after हेत्वंतरमपि.

2 दृष्टान्तव्याजेन—Lit, under the pretext or guise of an illustration or example.

3 Manu VIII. 222 cited in Mitākshara text p. 117. l. 17. Tr. p. 318. ll. 10–15.

4 अहमहमिका Lit, competition i. e. each one contributing his best skill &c.

15.) *or...the chief qualities &c.* (p. 377. l. 17.) *Pradhâna i. e.* the chief. *Guṇa* i. e. occupying a subordinate position. For the chief a larger share for a subordinate of him, less than his, and on an assumption of still lower, still lower, and much lower shares may be determined. This is the meaning.

---

## Yâjñavalkya Verse 261.

**Râjato nirûpaṇâditi** l.25.) *determined upon by the king &c.* (p. 378. l. 7.) *i. e.* when determined by the king. **Asâviti** (l.20.) *he &c.*; by this is indicated the king. This is the meaning : As the price was determined upon by the king, a commodity whose price is twenty *paṇas,* from that the king shall take one *paṇa.* **Râjagâmi mûlyadânanirapekshamiti** ( l. 27). *Shall belong to the king...without regard to the payment of price* &c. (p. 378. ll. 12-14.). The connection (of words) is that without regard to the price, it shall go to the king. Of this very text, the Author points out the meaning in substance : **Tatsarvamiti** (l. 28.) *all that* &c. (l. 12.)

---

## Yâjñavalkya Verse 262.

**Te sarve paṇyâdashṭaguṇamiti** ( p. 113. l. 2. ) *all these...eight times the...commodity &c.* (p. 378. l. 23.) It should be understood that all these shall each be fined, and not collectively, as the (responsibility for the) offence is equal.

---

## Yâjñavalkya Verse 263.

**Paṇam yânam tare dâpya iti** (l. 7.) *a ferry, a conveyance shall be made to pay a tax of a paṇa &c.* (p. 379. ll. 2-3.) The meaning of this: The sage will mention further on viz. "in conveyances etc. fully laden", therefore here an empty conveyance is (to be) taken. An empty conveyance, such as a cart or the like-for one who has to cross. A ferry, that by which one floats is a *tara,* the price for that. The ferry should be caused to be paid the charges for crossing. By the words conveyance &c. is intended the owner of the conveyance &c. If it be asked, what is that price ? the Author says : **Paṇamiti**-*a paṇa i. e.* as much as may amount to a *paṇa.* "A man" i. e. a load capable to be carried by a man. He should be made to pay half a *paṇa* as the charge for the ferry. "An unloaded man" i. e. a man without a vessel, should be made to pay an

eight share of a *paṇa* ; carts and the like conveyances laden with merchandise ; 'according to substance' i. e. by regard to the high or low (character of the ) commodity. *Târyam* i. e. charges for the ferry ; should be made to pay. Empty vessels, such as empty parrot-cages and the like, shall be made to pay "a trifle" i. e. small. "Men without luggage" i. e. men such as grocers and the like without articles for sale, shall be made to pay a trifle. What has been stated before viz. "one half of a *quarter* for an unloaded man" is applicable to others than traders.

**Na bhinnakârshâpaṇamiti** " Never on a sum less than a *kârṣhâpaṇa*" &c. This is the meaning: Less than a *kârṣhâpaṇa*, i. e. short of a *kârṣhapaṇa* i. e. to say the price of which is less than a *kârṣhâpaṇa*. For such there is no toll ; nor on livelihood gained by works of art &c. "Not on the remains of stolen property" i. e. on property remaining after being taken away by thieves &c. "Nor on a sacrifice' i. e. there is no toll in regard to articles for use thereof while being taken out, nor for the man going for it.

The Author now expounds the original text **Tiryatenenetyâdinâ** (l. 12.) Beginning with *that by which* (*a thing*) *is floated &c*. (p. 379. l. 15.) and the rest.

---

## Yâjñavalkya Verse 264.

**Sambhûyakâriṇâmiti** ( l. 19. ) *those who trade in partnership &c.* ( p. 380. l. 1. ) i. e. In concert doing trade or a like business. **Jñâtayopatyawargawyatiriktâ iti** (l. 20.) i. e. *jñâtis such as other than lineal descendants* &c. (l. 5.). Here the connection (of words) is not as either *sapiṇḍas or jñâtis* other than lineal descendants—but the *sapiṇḍas* and *jñâtis* other than lineal descendants. Thus the word "*wâ*" 'or' is indicative of an option in regard to that expressed by the word "have come" to be mentioned hereafter, and the line of descendants and ending with the *sapiṇḍas*. That option, however, is according to the established rule, and not according to the desire. This very meaning will be made clear in the sequel.

Indeed if the word "or" is indicative of an optional alternative, and in that case just as is the case of an optional alternative in "paddy or barley', there would be a conflict with the text "the wife, the daughters &c." which lays down a rule of order, so the Author says: **Paurwâparyaniyamastwiti** (p. 143. l. 23.) *The rule as to the order &c.* (l. 10.). The meaning is this, the option is according to the rule of adjustment. And the adjustment is to be

PAGE 100*

understood as without contradicting the order of sequence in what has been demonstrated in the text "the wife, the daughters &c."

It may be said, if the right of inheritance is in the order of 'the wife, and the rest', then the text "one who has gone abroad and died" &c. must not be begun, as there is no occasion for it, so the Author says: **Śishyasabrahmachârîti** (l. 24), *the pupil, the fellow-student &c.* This is the import: Under the text, "The *gotrajas*, the *bandhus* the *pupil*, a *fellow-student*", in the absence of the Bandhus, the pupil and the fellow-student are, in order, heirs to the estate. In their absence, under the text, "In the absence even of all, the Brâhmaṇas get the inheritance.' By saying that the Brâhmaṇas get the inheritance, the pupil and others demonstrated before, stand excluded, and there was a reason[1] for the tradesman to take. Therefore in the absence of sons and the rest, after the Bandhus, the tradesmen making up the partnership shall take.

It has been mentioned that even in the absence of the tradesmen, it should be deposited for ten years. That has been made clear by **Nârada** as the Author says, **Tadidamiti** (l. 27). *All this &c.* (l. 15). **Ekasya Chetsyânmaraṇamiti** (l. 27). *should one...die &c.* (l. 19). Of the traders carrying on business in partnership should death occur of one, that thing *i.e.* the heritage, his *dâyâdas i.e.* persons commencing with the sons and ending with the Bândhavas, in the absence of the prior each one of the posterior, shall get. In the absence of a *dâyâda*, another trader, who is able to offer the *piṇḍa* and do like acts, shall get. If unable to offer the *piṇḍa*, all those traders shall get. This is the meaning. In the absence of that, and the rest it is easy to understand.

## Yâjñavalkya Verse 265.

The Author mentions those expressed by the word *Karmis*, "workers.": **Naṭanartaketi** (p. 144. l. 7.) *actors, dancers &c.* (p. 1,38 l. 13.).

The Author mentions a text of Manu laying down the distribution of *Dakshiṇâ*, as it refers to the *Dakshiṇâ* and its distribution as ordained in *Śruti*: **Taṃ Śatena dîkshayantîti** (l. 10). *they shall endow it with a hundred &c.* (p. 382 l. 4). The meaning of this: As the cows were in evidence before, 'with a hundred' *i. e.* a hundred of

1 प्राप्तिः—scope for his admission as an heir.

the cows, the head priest and others shall be endowed. When the reading is *natam śateneti*, then *Natam*[1], *Natim*, *Ānatim*, dependent *i.e.* for dependence, on the sacrificer they endow him with a hundred; since the priests at a sacrifice become dependent on the sacrificer by reason of their accepting the *dakṣhiṇâ*.

It may be argued, indeed, in this passage the acceptance of a hundred cows is prescribed by regard to the initiation, therefore, the rule is not regarding *dakṣhiṇâ*, then how can this text be taken as laying down *dakṣhiṇâ?* so the Author says: **Iti wachanenetl** (p. 144. l. 10.) *under the text &c.* (p. 382. l. 3).

This is the import: As in the matter of securing satisfaction by means of the action of eating, the thing ordained is milk in the text "By means of milk should the satisfaction be secured", that milk falls in the place of cooked rice which is the means of dinner, similarly here also by the expression "they initiate" the initiation has the result of the gift of the *dakṣhinâ* in the form of bending. Bending means being humble, being amenable. After accepting their wages, i. e. like paid workmen by accepting the *dakṣhinâ*, the sacrificial priests have become dependent. In this act of *dakṣhinâ* in which dependence results, the hundred of cows which is ordained as a means of accomplishing the act of making the gift of a *dakṣhiṇâ* falls in the place of the *dakṣhiṇâ*, and therefore of course the hundred of cows itself becomes the *dakṣhiṇâ*, and so this text leads to the *dakṣhiṇâ*. This is what is (intended to be) said: a hundred cows have been ordained as a *dakṣhiṇâ*.

Now, with a view to expound the text of **Manu** viz. "Among all ...those entitled to a half &c.", the Author introduces it: **Ṛtvijásçheti** (l. 11). *the officiating priests &c.*

By the expression "these are entitled to a half of hundred cows" as compared with a hundred, fifty being a half, the same should be the manner of making a distribution; intending this and desiring it to be so expounded the Author says: **Sarveṣhām bhâgaparipûraṇeti** (p. 144 l. 13) *to make the division complete into entire numbers &c.* (p. 382 l. 12). For a division into entire numbers (this is) an expedient; according to that, i. e. in pursuance of it; by that, arrived, i. e. obtained; and that is the half in the form of a forty-eight. Thus is the

1 These are the several modifications of forms derived from the basic root verb नम् to bow. The meaning is that the priest who bends everything for the benefit of the person for whom the sacrifice is being preformed is given a hundred as his *dakṣhiṇā*.

compound (to be understood). The meaning is that by any other method the making of a distribution of the *dakṣhiṇâ* among the half-sharers and the like is impossible. **Tasya mukhyâmśasyeti** (l. 14) *of the principal portion &c.* Here the principal portion is in the form of forty-eight.

**Na tâwadatra samaya iti** (l. 18) *There is here neither a compact &c.* (p. 322 l. 21) *i. e.* there is no agreement made, that of the principal shall be a larger share, and of the others less, further less and lowest. The meaning is that it was not a combination of wealth (here) as is done in a trading partnership, like ten (being contributed by one,) eight, by another, and six by still another.

PAGE 101* This is an *Adhikaraṇa* in the third *Pâda* of the tenth *Adhyâya*[1]. "Should be equal, since it has not been mentioned in the *Śruti* or *Veda*" is a *Śruti* text seen in (connection with) *the Jyotishtoma* sacrifice. It has been demonstrated in a former[2] *adhikaraṇa*, that 'his *dakṣhiṇâ* of twelve hundred consists of cows, horses, mules, donkeys, goats, sheep, paddy, barley, sesamum and beans, *i. e.* twelve hundred of cows and others viz. horses &c. as the *dakṣhiṇâ*, and in the last *adhikaraṇa* it has been stated that this very *dakṣhiṇâ*, should be divided. In this state of things a question arises about the division : should the division be equal, or according to the work ; or the doubt arises whether it should be in pursuance of the enumeration viz., those entitled to a half &c.; There, to the position (put forth) that since a particular (share or rule) not having been stated, equal shall be the share for all the *ṛtwijs*, according to a side of the established conclusion the distribution

---

1 This is 14th *Adhikaraṇa* in the 3rd Pāda of the 10th Adhyâya and covers Sūtras 53-55 which run thus. समं स्याद्श्रुतत्वात् ५३ । अपि वा कर्मवैषम्यात् ५४ अतुल्याः स्युः परिक्रये विषमाख्या विधिश्रुतौ परिक्रयान्न कर्मण्युपपद्यते दर्शनाद्विशेषस्य तथाभ्युदये ५५. This *Adhikaraṇa* deals with the subject that the division of the fee depends not upon work done, but upon a text to that effect.

The subject of the fees begins with the 11th *Adhikaraṇa* in this *Pâda* and is carried to the end of it, up to the last *Adhikaraṇa* i.e. the 21st (Sutras 74-75). To facilitate a clear understanding of the present *Adhikaraṇa* it is better to note the three preceding *Adhikaraṇas*. These Adhikaraṇas demonstrate that in the ज्योतिष्टोम sacrifice the fee of 1200 (11) is of the cows only (12) and should be given after a division (13). The last of the *Adhikaraṇa* runs thus, तत्र दानं विभागेन प्रदानानां पृथक्त्वात् (५०) परिक्रयाच्च लोकवत् (५१) विभागं चापि दर्शयति (५२) समं स्यात् &c. (५३).

2 i. e. 11th *Adhikaraṇa* द्रव्यविधिसंनिधौ संख्या तेषां गुणत्वात्स्यात् १०।३।११.

should be according to the work after the manner of what is done in popular practice. In such a position, the correct doctrine is: In the text regarding the order of initiation in the *dwâdaśâha* sacrifice: "The *Adhwaryu* after initiating the master of the house, initiates the *Bṛahmâ*, then the *Udgâtṛ*, then the *Hotṛ*, then the *Pratiprasthâtâ* after initiating him, initiates those entitled[1] to a half; then the *Neshtâ* initiating him, initiates those entitled[2] to a third, then the *Unnetâ* initiating him initiates those entitled to[3] a fourth, thus has been laid in the *śruti* the enumeration of the half and the rest. Therefore by reason of the same, the rule of distribution in accordance with that mentioned for the *dwâdaśâha* sacrifice, is inferred for the *Jyotiṣhtoma*.

We resume the matter in hand. Relying upon the position of the objector, as also of a side of the correct conclusion the Author mentions a two-fold doubt, **Samam syâd aśrutatwâditi** (l. 19). *In the absence of a special rule, the share shall be equal &c.* (p. 382, ll. 24–25.) As a particular rule has not been mentioned, it shall be equal. This is the import of the objector. There being the inequality of the duty of each priest at the sacrifice, it should be according to the work (done), is the view of a side of the established conclusion. The Author refutes these by a reference to the final conclusion: **Tatrochchyata ityâdinâ** (l. 20). Beginning with *here the answer is &c.* (l. 27).

The import is this: *Śruti* (a direct statement), *Linga* (power), *Vâkya* (sentence or syntactical connexion), *Prakaraṇa* (interdependence), *Sthâna* (place), and *Samâkhyâ* (name) are the means of proof which make known the meaning intended. *Samâkhyâ* means designation. In the *Dwâdaśâha* which is a variant of the *Jyotiṣhṭoma*, the term *ardhina* is only mentioned as a designation. On the strength of the designation, in the principal sacrifice of *Jyotiṣhṭoma*, the distribution of the *dakṣhiṇâ* is to be made in the same manner. Otherwise in the variant *Dwâdaśâha*, the term *Ardhinaḥ* would not be taken as a repetition of an established one. This is what is (intended to be) said: Without an interpretation which would involve a contra-

---

1 According to the following details viz. ब्राह्मणाच्छंसी from the ब्रह्मा group; प्रस्तोता from the उद्गाता group and मैत्रावरुण from the होता group.

2 आग्नीध्र from the ब्रह्मा group, प्रतिहर्ता from the उद्गाता group, and अच्छावाक from the होता group.

3 viz. पोता from the ब्रह्मा group, सुब्रह्मण्य from the उद्गाता group, and ग्रावस्तुत् from the होता group.

diction with the designation[1] in the variant[2] in the basic sacrifice, the aforesaid distribution of the *dakṣhinâ* should be made.

Thus ends the chapter on the **Law of Partnership.**

# Chapter XXIV.

## ON THEFT.

The Author expounds the text of **Manu** viz. "An offence, which is committed in the presence &c" : **Anwayawat drawyarakṣhityâdinâ** (p. 144. l. 28). Beginning with *In the presence i. e. in the presence of the owner guarding, or the king &c.* ( p 383 l. 13). The Author states the substance of the portion "as also where anything denied after it is committed &c" : **Yachcha Sânwayamapîti** (l. 30). *Where, moreover, when the act is committed in the presence &c.*" (p. 384. l. 1,).

The Author introduces the original text : **Tatra taskaragrahaṇeti** (p. 145. l. 3) *There as the catching of a thief &c.* (p. 384. l. 8.)

## Yâjñavalkya Verse 266.

**Apaṛhtabhâjanâdinâ weti** ( l. 7.) *the vessel* &c. *which had been taken away &c.* ( p. 384 l. 18 ). The meaning is, that in his house where it was lost on account of theft &c. if it be found in any one's house or in the hand, by that sign that man should be arrested. **Wâsaḥ sthânam yasyâsâwiti** ( l. 8. ) *place of residence, whose it is, that.* That which is resided in is a residence. At each place the word place is to be understood as relating to that place only which has been resided in and not by taking a residence *i. e.* a place as one word.

## Yâjñavalkya Verses 267-268.

In the expression " whose mouth becomes parched up, and voice falters ", by the base of the words one whose mouth has become parched up and one whose voice falters only two have been taken ; by the termination of *Jas,* however, many have been indicated. Therefore by reason of the mutual contradiction between the base and the termination, the formation of the word would be improper ; anticipating this, the Author says : **Bahuwachanâditi** ( l. 18 ). *By the......plural number &c.* ( l. 16 ). The import is this : The base ( word ) is indicative of others ( by implication ), thereby are included also those whose forehead perspires and the like others. And thus

1 समाख्या. See note 1 on p. 383. Mitâkshara.

2 As opposed to प्रकृति the principal or base.

the plural number being ordained only when the plural is intended to be mentioned, there is no contradiction between the base and the termination.

PAGE 102* **Anyahastâtparibhrashṭamiti** ( p. 145 l. 24 ) *when it had dropped down from another's hand* &c. ( p. 385. l. 30. ). The meaning is that an investigation should be made whether it had fallen in his house from the hand of another *i. e.* of the thief, or whether it was placed by others and was found at random while the land was being dug.

---

## Yâjñavalkya Verse 269.

The advice that the soul should be purified by human evidence or by the ordeals, is not proper, since, evidence is applicable in an affirmative assertion and therefore in an answer of a simple denial of a negative character having no form, there is no scope[1] for evidence being adduced; anticipating this, the Author says : **Nanu nâham chora iti** ( p. 146. l. 1 ). *Indeed......I am no thief &c.* ( p. 38[?]. l. 14 ) The Author concludes by **Uchahyate** ( l. 21 ). *The answer is &c.* ( l. 16 ). **Mânusham punariti** ( p. 146. l. 2 ). *moreover, although human proof &c.* ( p. 386. l. 19. ).

This is the meaning : Here on account of the answer of the simple denial as to non-existence, although human evidence cannot be adduced in such a place, still in an answer of denial of a mixed with an exception, even human evidence has indeed scope. How ? Through the exception which is used as a means of the denial and which is of an affirmative character. This is what is ( intended to be ) said : In an answer of a simple denial, only an ordeal, while in a mixed answer even human evidence, becomes possible.

This very thing he expounds by an illustration : **Yathâ nasâpahârakâla iti** ( l. 4 ). *As......at the time of the loss or theft &c.* ( p. 386· l. 24. ). The meaning is, that when one is accused on a suspicion of theft, if it is established by witnesses that at the time of the loss of the thing he was in another country, the absence of the theft becomes necessarily established, and he is declared absolved.

---

1 This has a reference to the well-known rule of evidence that when a witness denies that he was at a particular place all further questions which assume his presence there are stopped until the fact that he was there is proved otherwise.

## Yâjñavalkya Verse 270.

The Author cites the text of **Nârada** in support of what has been stated : **Sâhaseshu ya evokta iti** ( l. 9. ) *which has been ordained-for the Sâhasa* (p. 387 ll. 17-18.) The meaning is that the punishment which has been stated for the *Sâhasas i. e.* for the three acts called *sâhasa* of the highest, middlemost, and the lowest, that very punishment has also been laid in the order also for three (kinds of) thefts of things fit to be the subjects of the highest and other *sâhasas.* By this this is what has been ( intended to be ) said : In the case of a theft of the best articles, the punishment for the highest *sâhasa* having been prescribed, and death also being included in the punishment for the highest *sâhasa,* is proper for the theft of the best article. **Etachha daṇḍottarkâlamiti** ( p. 146. l. 18 ). *This moreover......after the punishment &c.* ( p. 388 l. 10. ). 'This' *i. e.* branding with a dog's foot.

---

## Yâjñavalkya Verse 271.

**Tadwishayâdhipatiriti** (p. 146. l. 26.) *The owner of such property &c.* (p. 388. l. 29) *i.e.* the ruler of the country. **Chauraṃ dhanaṃ cheti** (l. 26) *thief and also property &c.* ( p. 388. l. 29 ), *i. e.* should hand over the thief ; and if unable to do that, the property. **Athawâśeshamiti** ( l. 27 ). The words should be split as *aśesham* ' in entirety' **Vivite twapahâra iti** ( l. 29 ). *when, however, the theft takes place in a pasture-ground &c.* ( p. 389. l. 5 ). By pasture-ground is to be understood a portion of land where grass and fuel are stored in abundance, and which is enclosed and guarded, as has been stated[1] in the chapter on Disputes between owners of cattle and the herdsmen.

---

## Yâjñavalkya Verse 272.

**Vikalpawachanantu yathâ tatpratyâsattîti** ( p. 147. l. 5) *The optional clause, however, used to indicate that as much as should be done &c.* (p. 389. l. 26). *i. e.* those villages which are contiguous to the place of the theft, should alone pay and not, moreover, the rule that five villages or ten villages. The meaning is that the optional expression 'or' is with a view to avoid it as an (obligatory) rule. **Yadi tasmin dâpya iti** (l. 8.). *If while the property is being restored &c.* (p. 390 l. 2). When caught as 'a thief' and while that man is being made to pay

---

1 See Mitākshara text. p. 109. l. 17. transl. &c. 299. ll. 5-6.

the amount, if in regard to 'the stolen property' *i.e.* as regards the theft a doubt occurs then he should be administered an oath. Or by means of relatives *i. e.* religious comrades as witnesses, he should establish *i. e.* remove the suspicion. This is the meaning.

---

## Yâñavalkya Verse 273.

Indeed, by the text "shall cause to be impaled on stakes, men," a mere mounting on the stakes only is inferred, and not death. For as under the text[1] "should offer to a *Śrotriya*" the accomplishment of the rule is secured by a touch[2], similarly here also, the rule is complied with by a mere mounting on the stakes, so having done that only, they should be taken off and should not be executed, so, the Author says : **Ayan cha wadhaprakâra iti** (p. 145. l. 12) *This moreover... rule regarding...corporal punishment &c.* (p. 390 l. 15). By the text[3] of **Manu** viz. " A fire-house &c." the punishment of death being established for these also, to an inquiry in what manner would (the punishment of) death be inflicted, the answer is that the special method of inflicting the punishment of death by impaling on the stake is being prescribed in this text. This is the meaning.

---

## Yâjñavalkya Verse 274.

PAGE 103*

**Tau Yathâkramamiti** (p. 147 l. 18). *These two respectively &c.* (p. 390 l. 26). The distinction is that a pick-pocket is to be deprived of the hand, and the cut-purse of the two fore-fingers making up a tonge. **Prathame graha iti** (p. 147 l. 23) *on the first conviction* &c. (p. 391 l. 10). 'First conviction, i. e. first (offence of ) theft.

---

## Yâjñavalkya Verse 275.

**Parigrahaviniyogeti** (p. 147 l. 25). *The relation or the appropriation &c.* (p. 391 l. 18) e. g. 'for stealing a cow owned by a Brāhmaṇa a greater punishment'. Ownership by a Brāhmaṇa is the cause

---

1 See Ācharādhyāya Verse 109.

2 V. L. On p. 102. l. 29. read thus : श्रोत्रियायोपकल्पयेदित्यत्र स्पर्शेन यथा विधिसिद्धिः तद्वदत्रापि शूलारोपणमात्रेणैव &c.

3 It appears Subodhini reads Manu IX. 280. cited in Mitākshara on Verse 273 as अग्न्यागारायुधागार &c. and not as कोष्ठागारायुधागार &c. as has been done in the Mitākshara.

of a greater punishment ; similarly, if that cow is used to be milked for the perpetual sacrifice, for stealing such a one even a still higher punishment ; thus, appropriation also is the cause for a greater punishment. Thus it is to be understood that an absence of such a kind of relation or appropriation will be a cause for a smaller punishment.

By the text of **Nârada** viz. "which has been ordained.—for the Sāhasas &c", for thefts of inferior, middling, and highest articles, generally the punishments respectively for the first, middling, and highest *Sāhasas* have been provided for. The Author expounds in substance the first half of the original text as laying down a special rule: **Mṛnmayeṣhu maṇimallikâdiṣhuiti** (p. 148 l. 5). *In the case of a jewel or a pot which is made of earth &c.* (p. 392 l. 11). Here, 'made of earth' is indicative of an inferior article : 'Other than cow's &c' articles of middling value, and 'belonging to a Brāhmaṇa' of the highest. This is the distinction.

It has been stated that the punishment should be determined in accordance with the price &c. Thus, desiring to point out those expressed by the word *Ādi* 'and others', the Author expounds the latter half of the original text : **Tatra daṇḍakalpanâyâmiti** (p. 148 l. 8). *There for fixing upon a punishment &c.* (p. 392 l. 17).

Indeed, it may be asked, in such a case are the place, the time, the age, and the capacity alone the causes for determining punishment ? The answer is, not so ; but there are other causes also which are impliedly indicated by these place &c. so the Author says: **Etachcha jâtidrawyeti** (p. 148 l. 9). *This moreover...the caste, the article &c.* (p. 392 l. 20).

The Author points out the mode of (determining) punishment by regard to the caste as also by regard to the qualification &c. **Tathâ hi aṣhṭâpâdyamiti** (p. 148 l. 9). *Moreover...is eight-fold &c.* (p. 392 l. 23) **Viṭkṣhatriyabrâhmaṇâdînâmiti** (l. 12) *of the Vaiśya, Kṣhatriya or Brāhmaṇa &c.* (p. 392 l. 29). Here the term 'learned' is adjectival of the *Vaiśya, Kṣhatriya* and the rest. By regard to his being a *Śûdra* or a twice-born, as also by regard to the qualifications in the form of learning, the punishment is to be determined. This is (what is meant by) "by regard to caste and quality."

It may be said, by the text[1] "for stealing, an additional punishment &c." **Manu** has prescribed a corporal punishment. And by the term corporal punishment are mentioned acts commencing

1 Ch. VIII. 320.

with beating and as far as deprivation of life. Are all these to be administered cumulatively? So the Author says, **Hartūrhiyamāṇeti** (l. 19). *Against the thief-of being deprived &c.* (p. 393 l. 11). The meaning is that by regard to the quality of the thief, as also by regard to the qualities of the owner of the thing, which was being stolen.

**Dwijodhwagaḥ Kṣhīṇawṛtiriti** (p. 149 l. 4). *A twice-born who is travelling and whose provisions are exhausted &c.* ( p. 394. ll. 16–17). ' Whose provisions are exhausted' *i. e.* whose supply of stores on the journey is exhausted. 'Travelling' *i. e.* in the way, 'a twice born' *i. e.* one belonging to the twice born caste. The words 'travelling' and 'whose provisions are exhausted' are adjectival of the twice-born.'

**Hīnakarmaṇīti** (p, 149. l. 6) *who neglects hist sacred duties &c.* (p. 394. l. 22). 'One who neglects his sacred duties' *i. e.* who have reduced[1] their course of conduct, and not from the higher ones.

---

## Yâjñavalkya Verse 277.

**Śataṃ dandobhihita iti** (l. 18.). *a fine of a hundred has been mentioned &c. i. e.* in the chapter on *Sâhasa.* **Brahmahatyâtideśaṃ wakṣhyata iti** (p. 395. l. 19). *for the fœtus of a Brâhmaṇa, the Author will mention &c.* (p. 395 l. 21.). *i. e.* will mention in the Prāyaschittādhyāya.

**Puruṣhasya Strīyâschâ pramâpana iti** (p. l. 19.). *For the murder of a man or a woman &c.* ( p. 395. l. 23). For the murder of a man of good morals and conduct, as also of a woman, the punishment is that which is laid down for the highest *Sâhasa*; while of those without good morals or conduct, only the first *Sâhasa* thus is to be noted the rule of adjustment in the option. For the murder, moreover of men with small morals or good behaviour, by deduction, the punishment comes to be that for the middle *sâhasa.*

---

## Yâjñavalkya Verse 282.

**Kaṭairvīraṇamayairiti** ( p. 150 l. 17 ) *i. e. by the vīraṇa grass &c.* (p. 397 l. 25) That grass at the root of which is the fragrant *khus* is

---

1 Cp. another Smṛti cited by Medhātithi p. 836. l. 26.
" हीनादादेयमादौ स्यात्तदलाभे समादपि । असंभवे त्वाददीत विशिष्टादपि धार्मिकात् "॥

called *Virana,* vide Amara. " It shall be called *Virâṇa* or *Viratara,* at whose root is the *uśira* ; it is used in non-feminine ( gender ). "

Here ends the Chapter on Theft.

## Chapter XXV.

### ADULTERY WITH WOMEN.

PAGE 104.* **Parasparamupâśraya iti** ( p. 150. l. 24. ) *with mutual contact &c.* ( p. 398. l. 13. ). The meaning is that by embracing, catching the garment, leaning upon the arms and the like acts, having a mutual contact. **Samyak samgrahaṇamiti** ( p. 150. l. 24. ). *Complete act of adultery &c.* ( p. 398. l. 14. ) 'Complete' i. e. in all datails, *i. e.* a completed *i. e.* highest act of adultery.

Having stated the threefold division of adultery, the Author introduces the original verse : **Sangrahaṇajñânapûrvakatvâditi** ( l. 26. ) *As the detection of adultery is necessary &c.* ( p. 398. l. 16. ).

### Yâjñanalkya Verse 283

In the expression *keśâkeśi*—' holding each other's hairs '—what is the compound ? How moreover is the word derived ? Anticipating such a question, the Author says : **Tatra tenedamiti sarupe** ( p. 141. l. 2.) *Two homogeneous words coming together indicating 'this happens therein or with that &c.'* ( p. 399. l. 1-2 ). By '*Tatra*' is meant that the homogeneous word is in the locative case; '*Tena*' that the word is in the instrumental case. '*Idam*' means that a compound is formed ( of these ) with this sense. The compound is known as the *Bahuvrîhi* compound ; this is the meaning of this aphorism.

If the compound is solved as by catching in the hair of each other, this is begun, under the rule[1] (of grammar) "The affix *ich* (इच्) comes (after a *Bahuvrîhi*) when the compound denotes reciprocity of action". That compound of *Bahuvrîhi* which has been laid down by '*Tatra tenedamiti*' in a reciprocity of action, from that, occurs the affix (इच्). This is the meaning of this aphorism under the rule[2]: "(The elongation of the final) is to be found in other words also", the first word is elongated.

Being at the end of a compound termination, in the crude form under the rule[3] : "and the words *tiṣhṭhigu* (i. e. at the time when the

1 Pâṇini V. 4. 127. 2 Pâṇini VI. 3. 137. 3 Pâṇini II. 1. 17.

cows stand to be milked) and the like also (are Avyayībhāva compound) being enumerated[1] in the *tiṣhthadgu* group, when (the compound expression) *Keśākeśi* has the name of *Avyayībhāva* under the rule,[2] "An *Avyayībhāva* compound is also (neuter gender)", and under the rule[3] "A *luk* elision occurs of आप्[4] (*Āp*) and सुप्[5] (*Sup*) after an *Avyaya*[6]" the luk elision having occurred in the instrumental case, the word *Keśākeśi* comes out as the result. This is the meaning.

It may be said, indeed, it is not possible to arrest a man as intent upon committing adultery on account of the signs in the form of scars made by nails &c, for that is also possible as the result of anger or insult, so the Author says : **Râgakṛtairlingairiti** (p. 151 l. 4) *from signs of amorous intercourse &c.* (p. 399 l. 7). **Dwayoḥ sampratipatyâ weti** (l. 5) *or by the admission of both &c.* (l. 9.) *i. e.* by the admission i. e. confession of the two i. e. of the straying woman as also of the adulterer.

**Parastrīgrahaṇamiti** (l. 5). *The use of the expression 'another's wife'* &c (p. 399 l. 11) Although in the case of a woman who is under an appointment, as the rule for coition prescribes the procedure of annointing the body with ghee, and as making scars with nails and the like acts are prohibited, still he should not be arrested on account of that mark as of a mutual admission, as it may also be possible under the procedure of appointment. In the case of kept mistresses, since they are common (property), even by aforesaid signs their arrest is proper. Therefore, the meaning is that those under an appointment and the like are excluded from the word 'another's wife'. This moreover will be made clear at the proper time.

---

## Yâjñawalkya Verse 284.

**Yastwanâkṣhârita iti** (l. 12) *That man however not before accused* &c. (p. 399 l. 28). "before accused" not accused i.e. not censured "as he is a paramour."

**Pratiṣhiddhayoḥ strīpuruṣhayoḥ** (l. 18) *a man and a woman... prohibited &c.* (p. 400 l. 10) i. e. of the straying woman and her para-

---

1 The words enumerated in this group, known as the तिष्ठद्गुगण are all irregularly formed *Avyayībhāva* compounds such as तिष्ठद्गु, यवगु, आयतीगवम् &c.—कचाकचि.

2 Pāṇini II. 4-18.

3 Pāṇini II. 4. 82.

4 i. e. the feminine termination.

5 i. e. the nasal affix.

6 i. e. an indeclinable.

mour who had been prohibited thus 'you must not speak with this man', 'you must not speak with this woman'. This is the meaning.

---

## Yâjñavalkya Verse 285.

**Nâisha chârañadâreṣhwiti** (l. 24). *This rule does not...to wives of chāraṇas &c.* (p. 400 l. 26). *'Chāraṇas'* i. e. the actors and the like. The import is, those who live by their wives, i. e. whose livelihood is by the proselytisation of their wives. Since they prepare their women for other men, and concealing themselves, cause them to have sexual intercourse. This is the meaning.

---

## Yâjñavalkya Verse 286.

Two points have been stated before viz. "When, moreover, he has intercourse with a woman of his own *varṇa* who was not under[1] (any one's) protection, or with a woman of a lower *varṇa* under-protection. There the Author mentions the penalty for intercourse with a woman of the same *varṇa* under protection: **Sahasraṃ Brâhmaṇo daṇḍya iti** ( l. 31 ) *A Brahmaṇa shall be fined a thousand &c.* ( p. 401. l. 14. ).

The meaning of this: Here the first half refers to the same subject as in **Yâjñavalkya** in the text viz. "In the case of one of the same class, the higher amercement ". Here *Brāhmaṇa* is indicative, by implication, of a *Kṣhatriya* and the like also ; so the term *Viprâ* also. Therefore in the case of *Kṣhatriya* and

PAGE 105*

the rest also, for having intercourse with a woman of the same class and under protection, the same rule should be understood (to apply).

This first half, moreover, has been cited by the Author of the commentaries for an exhaustive[2] treatment of the topic. It is only the latter half that is useful for the point under consideration. In the first half the expression is "under protection," while here a contrary meaning is intended, as the term "not under protection," is deducible[3] from the sense. Moreover also for having intercourse

---

1. गुप्ता This corresponds to the *concubine* under *concubinatus* of the Roman Law See the remarks of their Lordships in Nagubai's case 53 I.A. 153 at pp. 158-160.

2 प्रकरणशुद्ध्यर्थं. i. e. all the points arising under the topic may be touched.

3 i. e. as opposed to शाब्दं or श्रौतं expressed.

with one not under protection, but willing, and of the same *varṇa*, he shall be punished with a fine of five hundred *paṇas*.

The Author mentions the penalty for an intercourse with one in the descending order but under protection: **Sahasraṃ Brâhmaṇo daṇḍam dâpya iti** (p. 152. l. 1.) *A Brâhmaṇa shall be compelled to pay a fine of one thousand &c.* (p. 401. l. 18.). The meaning of this: The *Kṣhatriyâ* and the *Vaśiyâ* are under consideration; therefore for resorting *i. e.* going with a *Kṣhatriyâ* or a *Vaiśyā* woman under protection, a Brâhmaṇa should be compelled to pay a fine of a thousand *paṇas*. For a *Kṣhatriya* or a *Vaiśya* having intercourse with a *Śûdrâ* woman under protection, the fine shall be one thousand. By a parity of reasoning, for a *Kṣhatriya* going with a *Vaiśya* woman under protection the fine also comes to be declared to be one thousand.

The Author expounds the second half of the original text: **Pratilomya utkṛshṭastrīgamaṇa ityâdinâ** (p. 152. l. 7.) *In the case of a Pratiloma offence i. e. intercoure with a woman of the higher class &c.* (p. 402 l. 3). **Ubhāwapi tāweweti** (l. 8). *But even these two &c.* (p. 402 l. 7.) These two also *i. e.* the *Kṣhatriya* and the *Vaisya* for having had intercourse with a *Brâhmaṇī* woman under protection shall be punished as *Śûdras*. Under the rule stated in the text[1] "Loses all his property; if guarded, everything", they should be deprived of everything *i. e.* of the body as well as the property; *i. e.* the import is that after depriving them of everything they should be executed." Or be burnt in a fire of dried grass" is a special method of execution. The procedure of burning in a fire of dried grass, has, moreover been described in the Chapter on Theft.

This, moreover, has a reference to a virtuous Brâhmaṇī woman, the wife of a very learned Brâhmaṇa, because of the heaviness of the penalty, as also from the rule of punishment elswhere propounded viz. "a *Vaiśya* shall be punished with the deprivation of all his possessions, a *Kṣhatriya* a thousand".

It has been stated before that this has a reference to a woman under protection. Having stated the concurrence of **Manu** there, the Author cites a text of **Manu** for another point also: **Brâhmaṇīm yadyaguptâmiti** (p. 152. l. 9.) *If...with an unguarded Brahmaṇī &c.* (p. 402. l. 9.). For a *Kṣhatriya* going with a *Brâhmaṇī* woman not under protection, a fine of a thousand shall be

---

1 Manu VIII. 374.

the penalty. The meaning is that the penalty for a *Kṣhatriya* is greater than that for a *Vaiśya* as he is appointed[1] for the protection (of people). **Śûdro guptâmaguptām weti** (l. 12.). A *śūdra, whether guarded or not guarded &c.* (p. 402. l. 17.) If a *śūdra* goes with a twice-born woman whether under the protection of a husband &c. or not under protection, then the penalty presently to be mentioned should be understood.

The Author points out that very penalty in detail : **Aguptaikânga-sarwasweti** (p. 152 l. 12). *If unguarded, he loses the organ and all his property &c.* (p. 402 ll. 17-18). By going with one not under protection-loses an organ and entire property—one for whom the punishment is the deprivation-of one organ and of the entire property-is known as one with a loss of one organ and everything. The import is that after lopping off the organ he should be punished with the (deprivation of his) entire property. If guarded i. e. when under protection. Going with her he is deprived of everything, as also of his body. The meaning of this is that after depriving him of his entire property, he should be executed.

The Author expounds the portion "the lopping off of the ear and the like of a woman" **Nâryâḥ punariti** (p. 152 l. 13) *of a woman however &c.* (p. 402 l. 19). From the statement of the rule as to the lopping off of the ear and other organs of a woman having intercourse with men of the lower order, excepting where the intercourse is with a man of the lower order, the guilt is of a smaller character, as appears to be a reasonable inference from the absence of the (punishment of) lopping off of the organ.

For an intercourse with one of a lower order, a monetary penalty appropriate according to the possession or non-possession of good qualities, while for an intercourse with a woman of the same *varṇa*, a verbal punishment by the expression "fie, and the like", and thus a punishment should be administered in accordance with the (usage of the) country &c. Intending this, the Author says, **Ânulomyena weti** (l. 13) *with one of a lower tribe &c.* (p. 402 l. 19).

---

1 The offence becomes aggravated as being committed by one against the breach of his own duty—it being the function of a Kṣhatriya to offer protection to all.

2 Here is a mistake in the reading in the Subodhini as will be seen by a reference to the text of Manu Chapter VIII. 374, the correct reading अगुप्तमङ्गसर्वस्वैर्गुप्तं सर्वेण &c.

**Kṣhatriyavaiśyayoranyonyastrīabhigamana iti** (l. 20) *In the case of a Kṣhatriya or a Vaiśya, each having intercourse with a woman of the other class &c.* (p. 403 ll. 4–5). Here cumulation is not intended, each one being the cause of the guilt. Here also 'intercourse with one guarded' should be understood.

**Vaiśyaśchet Kṣhatriyâmiti** (l. 21) *If a Vaiśya...a female of the Kṣhatriya caste &c.* (p. 403 l. 7) i. e. the penalty which has been laid down[1] for an intercourse with a *Brāhmaṇī* not under protection viz. "Let him fine the *Vaiśya* five hundred, but the *Kṣhatriya* one thousand" they both deserve that penalty in order. Although *Kṣhatriya* is higher as compared with a *Vaiśya* it should be noticed that a higher penalty is laid down for him as he is entrusted with the duty of protecting (the people).

## Yâjñavalkya Verse 287.

PAGE 106* **Tadanabhimukhîmiti** (p. 152. l. 26.) *not approaching it &c.* (p. 403. l. 21.) *i. e.* not, approaching a marriage.

## Yâjñavalkya Verse 288.

**Aviṣhahya tu yaḥ Kanyâmiti** ( p. 153 l. 3 ). *But if one forcibly—a maiden &c.* the meaning of this is that he who violently *i. e.* by force &c. deflowers a maiden by striking his finger in the secret part, his two fingers should be lopped off, and he also deserves a fine of six hundred.

**Sânurâgâṃ pûpvavaddûṣhayatîti** (p. 153 l. 4. ). *Similarly defiles as before, one having a sexual desire &c.* ( p. 404. l. 22.). *i. e.* defiles by deflowering her by striking a finger &c.

The Author expounds the portion "And for (doing) similar acts towards one of a higher class, death" : **Yadâ punaruktrshtajâtîyâmiti** (l. 11). *When, however, with the higher tribe &c.* (p. 405 l. 8 ).

## Yâjñavalkya Verse 289.

**Sansṛṣhṭamaithunatwâditi** (p. 153. l. 21). *of having had mixed intercourse &c.* (p. 405. l. 28). She by whom intercourse was *sansṛṣhṭam i. e.* obtained, is one word, being implied in the compound.

1 Manu Ch. VIII. 376.

## Yâjñavalkya Verse 290.

**Uktalakṣhaṇavarṇastriyo dâsya iti** (p. 153 l. 27), *The women of the varṇas already described are* (*considered as*) *slaves &c.* (p. 406 l. 13) i.e. described in the chapter on Breach of Contract of Service by the text[1] "one born in his (master's) house, one purchased &c.

**Swairiṇī Brâhmaṇīti**[2] (p. 153 l. 32). *A Wanton woman a Brāhmaṇī &c.* (p. 406 l. 25). One who is wanton and is a *Brahmaṇī*. The word *Brâhmaṇī* is only indicative. Therefore wanton women of the *kshatriya* and others also are included. Similarly, a prostitute, as well as a female slave, as also one not restrained by her master ( *nishkâsinī* )—thus it is to be understood.

**Dâsyascha tâwadwarṇastriya eweti** ( p. 154. l. 4. ) *Even female slaves, are after all women of the varṇas &c.* ( 407. ll. 5-6. ). Here the word *Varṇa* is used as including only an extension of the *jâtis* in the lower order. Therefore it should be noted that the slavery exists in the *anuloma jâtis* such as the *mûrdhâvaṣikta* and others.

It may be said, indeed, let the wanton women and the like be women of the *varṇas*, still how can they not be common women ? Anticipating such a question and propounding an answer that having regard to the rule restricting them to their own men and forbidding them from other men, there is an absence of the commonness, so the Author says : **Na cha varṇastrīṇâmityâdinâ** (p. 154 l. 6). Beginning with *And in the case of women having a varṇa &c.* ( p. 407. l. 9. ) *i. e.* of one guarded in that manner, in short not defiled.

It may be said, indeed, as on account of an impurity of death, there is an absence of the capacity for performing one's religious acts such as the *sandhyâ* &c. so on account of the status of a female slave, there would be deflection from the rule regarding restriction to one's own man, then in that case let there be commonness as regards all men. Anticipating this objection the Author meets it : **Na cha dâsībhâwâdīti** (l. 11.) *nor, moreover......on account of a condition of slavery &c.* (p. 407. l. 23.).

This is the import ; In the case of an impurity on account of death and the like, the absence of the capacity is on account of a special text, and not on account of an initial character. Here there

---

1 Narada V. 26. See Mitāksharā p. 322. l. 1.

2 Subodhini reads as has been given in the Text. The passage in Nārada reads स्वैरिण्यब्राह्मणी &c.

is neither a text, nor on account of its initial character. Since by slavery is understood to be dependence, as in the case of pupils &c. Therefore there is no renunciation of one's own duty, so that there could be commonness.

It may be said again, indeed, let there not be unapproachability in the case of a wanton woman or a female slave by reason of an absence of commonness, but in the case of a prostitute as there is commonness, let there be approachability: Anticipating this, the question is, if you say so, then say whether this *Veśyâ* is approachable by reason of her falling within *jatis* other than the *varṇas* such as the *Brâhmaṇa* and the rest, and the *anuloma jatis* such as the *mûrdhavaṣikta* and others, or by reason of her falling within the *varṇas* or the *anuloma jatis?* or by reason of her falling within the *pratiloma jatis?* The Author states these doubts with a view to refute: **Nâpi veśyeti** ( l. 12. ). *Nor even a prostitute &c.* (p. 402. l. 25.). The Author refutes the first: **Varṇânulomajeti** ( l. 12.) *as have sprung from the lower order &c* (l. 26). The meaning is that a separate *jâti* like that being non-existent, approchability by reason of her being within it would not be.

Nor the second, so the Author says: **Tadantaḥpâtitweti** (p. 154. l. 13.) *If she falls within these &c.* ( l. 27. ). The meaning is that by reason of their falling within the *varṇas*, by reason of the rule that they should devote themselves entirely to their husbands, like the *swairiṇî or dâsî* as stated before, there would be no approachability.

Nor also the third, so the Author says **Pratilomajatweti** (l. 13) *prung from a pratiloma union &c.* (p. 407 l. 2 ). The meaning is that as the issue of a *Pratiloma union* are tainted, intercourse with them is prohibited.

PAGE 107* Moreover, the prohibition of an intercourse with another man extends to all women whether born of the *varṇas* or of the *anuloma* or *pratiloma* connection, and degradation being the result of doing the prohibited act, and association with one degraded being prohibited, the *swairiṇî* and the like are not fit to be approached by a stranger—thus by way of summing up the statement of the objection the Author says: **Ataḥ parapurushântarabhoga iti** (p. 154 l. 14). *Therefore coupling with another man &c.* (p. 408 l. 1).

The Author answers **Satyam evamityâdinâ** (l. 15). Beginning with *this is true &c.* (l. 5). This is the import: An offence

is of two sorts ; (with results) visible and invisible. There one (with) visible (results) would be where there is a fear of being chastised by a guardian or father &c., as also the fear of a punishment from the King. In the absence of a father as also in the absence of these, as in the case of others' wives with these two characteristics of lapses, there is an absence of approachableness, one in that manner does not exist in the case of the *swairiṇī* and the like, and hence the statement generally as to their approachableness.

Well, let there be a statement as to their approachableness. How is it that there is an absence of a punishment for approaching them ? So the Author answers : **Daṇdâbhâvascheti** ( l. 12. ) *and again......... an absence of punishment &c.* (p. 408. ll. 12–13 ). This is the import : In the text " In (the case of) women who are protected slaves a punishment has been laid down for an intercourse, with another man, of women restricted to one man each, it comes to be stated that resort to a man other than the one (to whom she is ) restricted is the cause of the infliction of a fine. Therefore, wherever there is no cause there is no punishment ; this is quite evident ; and so owing to the absence of such a cause, there is an absence of a punishment for an intercourse with a *swairiṇī* and the like others. This is the meaning.

It may again be said, let there be no punishment for a man going with a *swairiṇī* and the like, but let there be a punishment at least for the *swairiṇī* and like other women having the enjoyment, so the Author says : **Swairiṇyâdīnâmiti** ( p. 154. l. 17). *and again in the case of wanton women &c.* ( p. 408 l. 13 ).

Here also, the Author states another reason : **Kanyâṃ bhajantīmiti** ( l. 18. ) *A maiden who approaches &c.* ( p. 408. l. 5. ). This is the meaning : A maiden approaching a man of the highest tribe should not be made to pay any thing. Thus, a prohibition of a fine for a maiden is the principle[1] ; and from the appearance of a principle like this there must be an absence of punishment for a *swairiṇī* and the like. This is what is ( intended to be ) said : The existence of a principle is only a reason and not an invariable cause. A maiden is also a woman, so also are the *swairiṇī* and like others. Therefore both being generally women, that there should be an absence of punishment for the *swairiṇī* and the like others just as is with a maiden, is only a reason, and not the principal reason for an absence of a penalty for them.

---

1 लिंगं i. e. the ratio of the rule.

If thus there is an absence of a punishment, then there must not also be a penance, so the Author says: **Prâyaschittantwiti** (l. 19.) *An expiation, however, &c.* (p. 408. l. 17.).

It has been stated by some writers that the *Veśyas* are within the *varṇas*. With a view to state his own opinion beginning with a condemnation of the same, the Author comments on it: **Yatpunarveśyânâmiti** (l. 21.) *As for...prostitutes &c.* (p. 408. l. 20.) The syllogism should thus be formed: the *Veśyas* are fit to be regarded as falling within the *varṇas*. In the absence of being other than the *prati-loma jâti*, being included in the human *jâti* wherever the aforesaid cause exists, there also is an inclusion among the *varṇas*. As is the case with *Brâhmana* and others. The Author exposes the conclusion by pointing out the variableness in the cause: **Tatretyâdinâ** (l. 22. *There &c.* (p. 409. l. 2.). In the *Âchârâdhyâya* the *Kuṇḍa, Golaka* and others have been stated as not falling within the *varṇas &c.* Thus, although here a stated reason exists, the conclusion does not. This is the meaning.

Now the Author states his own view. **Ato veśyâkhyeti** (l. 23. *Therefore—known as the veśyâ &c.* (p. 409. l. 4.). The Author mentions that very *jâti*: **Utkṛshṭajâteriti** (l. 23.) *of a superior one &c.* (p. 409 l. 7) The meaning is: that is a caste which not having sprung from any prohibited man maintains itself by intercourse with males. **Panchamî jâtiriti** (l. 26.) *a fifth caste &c.* (p. 410. l. 2.). The meaning is that by regard to the *Brâhmaṇa* and others the *veśyâ jâti* is the fifth.

**Paśuveśyâbhigamana iti** (p. 155. l. 2.). *for having intercourse with brutes or prostitutes &c.* (p. 410 l. 9.) i. e. for an intercourse with brutes, as also for an intercourse with prostitutes.

---

## Yâjñavalkya Verse 291.

**Vaḍavâ smṛteti** (p. 155. l. 12.) *a female slave... known &c.* (p. 411. l. 10.) *Vaḍavâ* is a household maid.

---

## Yâjñavalkya Verse 292.

**Âkrameṇa cha sangachhanniti** (l. 10.). *Or who had forcible connection &c.* (p. 411. l. 29.) The meaning is that although she was unwilling, still forcibly causing scars with teeth, nail and the like, and having by force an intercourse. **Bahubhirwâpi wâsayediti** (l. 20.) *or cause to be approached by many &c.* (p. 411. l. 31.) The meaning is that he

who without paying a fee, or paying only one fee, causes her to have intercourse with many.

---

## Yâjñavalkya Verse 293.

PAGE 108*. **Pauruṣham wâbhimukho mehatīti** (p. 156. l. 3.) *or discharges the urine in the mouth of a male &c.* (p. 412. l. 6.) The expression 'of a male' is connected with either clauses like the rule[1] in crow's eye; and therefore the connection of words is, "or discharges the urine etc. in the mouth of a male", or, "discharges i. e. passes urine etc. in front of a man".

It may be said, indeed, here the penalty laid down for an intercourse with a female ascetic is twenty-four paṇas, while **Nârada**[2] commencing with he passage "The queen, a female ascetic &c." and ending with "When a man casually knows any one out of these women he is said to have committed the offence of violating the bed of a preceptor. For such a crime, no other punishment is ordained than the excision of the organ" has ordained the punishment of the lopping off of the organ, so there is a mutual contradiction. The answer is, it is not so. The text of **Nârada** is in reference to a highly qualified ascetic lady, or even there, for a habitual offence, while the text of the **Lord of the Yogis** has a reference to cases other than this, so there is nothing here.

---

## Yâjñavalkya Verse 294.

**Daṇḍanameveti** (p. 156. l. 9.) *Fine alone &c.* (p. 412. l. 21.) i. e. not branding.

Thus ends the chapter on **Adultery with Women.**

**Wiwâhâdividhiḥ strīṇâmiti** (p. 156. l. 13.) *Legal rules for women ...regarding marriage &c.* (p.402. ll. 29–30.) The order of words is that a chapter of law in which the legal rules of procedure at the marriage

---

1 काकाक्षिगोलकन्याय, the maxim of the crow's eyeball. It owes its origin to a supposition that the crow has one eye-ball and that it can move it to both sockets. It is applied to a word or a clause that may be applied to more than one object or purpose though the clause occurs only once.

2 Ch. XII. 74–76. See Mitāksharā text p. 152, ll. 5–6. Translation p. 401 ll. 26–30 and 402 ll. 1–2.

etc. of the women and men is stated, that title of Law is called "the Mutual Relations of Women and Men".

This is what is (intended to be) said: Where, in a marriage, a transgression occurs by the women or the men. It is thus: the maiden intends to marry one, and the man while being married does not want her on account of suspicions about defects (in her). Similarly a man desires to marry a certain maiden, but the maiden does not, on account of suspicions about defects (in him) or the like. In such a state of things, litigation is set in motion.

Moreover in the expression "marriage &c." by the term "*Adi*"-et cetera'-(is indicated that) on a transgression of the rules viz. "a woman must by all means be protected by a man" "a woman also must abide by her husband", a litigation takes place. All this is ( comprehended under) the title of Law called the Mutual Relationship of Women and Men.

---

# Chapter XXV.

---

## MISCELLANEOUS.

**Tatkarmakaraṇaṃ tathetyâdi** (p. 156. l. 22.) *as also obedience towards his injunctions &c.* (p. 413. l. 19.). 'Obedience towards his injunction' i. e. doing (according to) the commands of the king. **Punaḥ pradânaṃ** (l. 23.) *giving back again &c.* i. e. returning for acts done. In the reading "grants of towns by the king &c" (the meaning is) a grant for the protection of ports, towns, thickets, and other places. **Sambhedaḥ prakṛtînâṃ** (l. 23.) *divisions of the constituent elements of a state* i. e. bringing them together. Or the "divisions among the people" i. e. the internal difference which exists mutually among the people. **Pratigrahaviloph** (l. 24.) *abstraction of gifts &c.* (p. 413. l. 23.). Of a gift an abstraction i. e. retraction e. g. to a *Brâhmaṇa* who is fit for a donation and who is worthy, not making a gift. Or when intent on making a donation to a *sûdra*, not fit to be a donee, a destruction of the gift. **Asramiṇâṃ** (l. 24) *anchorites* i. e. of the celebates and others. **Kopaḥ** (l. 24) *wrath* i. e. ebulitions, outbursts, in short, swerving from their own duties. Or, of the anchorites mutual conflict i. e. quarrel. **Na dṛshṭaṃ yachcha pûrveshu** (l. 25) *whatever has not been noticed in the preceding titles &c.* (p. 413 l. 25). The meaning is what-

ever title has not been noted in the aforesaid i.e. in the Chapters on the Payment of debts and the like. The import is that of Disputes thus enumerated, where a decision is made, that is known as a Miscellaneous title. **Evaṃ cha wadatâ yo nṛpâśraya iti** (l. 29) *By saying this...that ...wherein the king is a party &c.* (p. 414 ll. 1–3). The meaning is, a dispute which is exclusively to be determined by the king.

---

## Yâjñavalkya Verse 295.

Now the Author introduces the original text, **Tatrâparâdhaviseshene**(p. 157 l. 1). *There for a particular offence &c.* (p. 414 ll. 4–5).

---

## Yâjñavalkya Verse 296.

**Dandatâratamyamûhanīyamiti** (l. 12) *a greater or less punishment should be determined &c.* (p. 415 l. 4). The meaning is that by regard to the force of the rules of expiation, having ascertained the greater or ess degree of the offence, the penalty should be determined after taking into consideration the possession of high qualities or their non-possession by (persons of) the *Brāhmaṇa* and other *varṇas.*

---

## Yâjñavalkya Verse 297.

PAGE 109* The Author states the meaning of the word *'cha'* 'and in the expression "also one who sells unclean meat". **Chaśabidât kûṭeti** (p. 157 l. 16). *By the use of the word cha—'also'... imitations &c.* (p. 415 l. 17)

The Author states the meaning of the word *cha 'also'* in the expression "and also be compelled to pay the highest amercement". **Chaśabdâdangeti** (l. 17). *By the use of the word cha 'also' organ &c.* (p. 415 ll. 16 19). This is the meaning : Even the organ should be lopped off, and should also be compelled to pay as a fine the highest amercement.

---

## Yājñavalkya Verse 298.

**Pâṣhâṇotkṣhapaṇena bāhuneti** (l. 23) *By throwing...a stone, by means of the arms &c.* (p. 415 ll. 31-32). The meaning is that by the arm as the agent, by the act of throwing a stone, that offence which has been committed. **Pâṣhâṇotkshepakeṇeti** i.e. "that which threw the stone" is also another reading. This is what is (intended to be) said : If while raising a stick by his hand and throwing it, if through mistake an injury

to a limb of any one about is caused, then he does not become responsible for it.

**Chhedane chaiva yantrâṇâmiti** (p. 158 l. 2) *when the leather thongs are broken &c.* (p. 416 l. 22). 'Of the leather thongs' i. e. of the leather ties, yoking i.e. the pair i.e. the pole which is tied to the neck of a bull &c ; 'ropes' i. e. the halters ; the breaking of these. **Apaihīti** (l. 3). *Away &c.* (p. 416 l. 23). The meaning is that in such a case there is no punishment for the owner.

---

## Yâjñavalkya Verse 305.

The Author removes the charge of tautology in the text[1] "Wrongly decided" on account of the text[2] "Councillors acting in departure from the rules of the *smṛtis* and doing similar acts out of passion, avarice, or fear, should each be separately punished with a fine double (in amount of the fine for) the dispute". **Aprâptajetṛdaṇḍavidhiparatwâditi** (p. 159 l. 21) *there is no rule of punishment for the wrongful winner &c.* (p. 420 ll. 9-10). He who was successful in the former litigation, if he is found to be an offender on a review, then that successful litigant, by reason of the defeat, is liable to a punishment, and so a rule for a punishment for a winner is being laid down by the clause "wrongly decided". As it has been reached by another text, regarding other portion it is only a reiteration of what has been said, and so there is no repetition.

It has been stated that the councillors together with the king should be punished. The Author cites a text for it : **Pâdo gachhatīti** (l. 25) *One quarter goes &c.* (p. 420 l. 15). The meaning is that by reason of the force of the text making the offender, and even all, responsible for the offence, they should be punished as offenders.

It may be said, for only one act the responsibility of the actors for the guilt is by portions, the punishment for these also shall be one only, and not severally for each, so the Author says : **Etachcha pratyekamiti** (l. 16). *This moreover...to each severally &c.* (p. 420 ll. 18-20). The meaning is that this text is intended to indicate that this text merely demonstrates the guilt and is not intended for demonstrating the responsibility of each in portions. There the Author states the reason **Kartṛsamavâyīti** (l. 27) *to the actor alone &c.* (p. 420 l. 23). This is the meaning: under the rule[3] in the maxim, "The merit prescribed in the *Sâstras* goes to him who employes", he whoever is the offender, in him

---

1 Yâjñ. II. 305. 2 Yâjñ. II. 4.

3 This is from Jaimini III. 7-18. which see.

will the merit go. That merit is two-fold. Belonging to this world, and to the other world. Of this world is punishment and the rest laidd own in the science of law. Of the next world, however, is hell and the like. In this state of things, the text commencing with 'passion and avarice'and ending with "the councillors shall each be severally punished with a fine double that in dispute" laying down the entire responsibility for each man severally in the :form of punishment, and of an illegal act also the nature being to generate the merit at the very place where it has sprung in the offender, by a reasoning which is not contrary to the production of an entire result for each, the connection of the unseen result of the merit is with each severally.

---

## Yâjñavalkya Verse 306.

PAGE 110* The Author states the meaning of 'decided' (*Tiritam*) in the text of **Nârada** : **Tiritamtyâdinâ Anuddhṛtadaṇḍamityantena** (p. 160 l. 12). Beginning with *decided &c.* (p. 36) and ending with *where the fine was not pronounced &c.* (p. 421 ll. 13–16). The Author states the meaning of the expression 'punishment declared' **Anuśishṭamityâdinâ yâwadityantena** (ll. 2–3). Beginning with *Where the punishment has been declared &c.* and ending with *to the stage &c.* (p. 421).

It may be said, indeed, in the text of **Nârada** viz. "Decided &c." it is being demnostrated that in a decided suit the fine together with imprisonment should be made, while contrary to this is in the text of **Manu**. Therefore there is mutual contradiction. Anticipating this, the Author refutes it : **Yatpunarmanuwachanamityâdinâ** (l. 3) beginning with *Again as for the text of* **Manu** *&c.* (p. 421 l. 19).

This is the import : It having once been determined that a litigation has been decided according to law, it has been stated that that suit must not again be re-opened ; and not that when there is a doubt whether it has been decided in accordance with law or not, it should not be re-opened. This is what is (intended to be) said : The text of **Nârada** has a reference to a doubt, the text of **Manu** has reference to certainty.

Here ends the **Miscellaneous Chapter.**

---

**The total work is 3604.**

"Whose mother was by name **Ambikâ** resplendent with the fame of a holy life, whose father was **Pedibhaṭṭa** of pure and holy conduct, and who was as if another image of *Sâkalya,* that **Srī Bhaṭṭa Viśweśwara** the ornamental jewel of the family of the **Kâuśikas** is always vigilant and ready for expounding the import of the good utterances of **Vijñâneswara.**"

"Whatever may have been here not said or stated badly may the great and learned[1] men make it into a good composition since their invariable[2] nature is to confer obligation. For the moon with its cold rays, a resplendent lamp, and clusters of jewels in the firmament while extirpating pitch darkness hold the light for the purpose of the people; what motive is there ?"

**Thus ends the Second Book**
**Called The Book of Positive Law**
**In the commentary by name Subodhini**
**On the gloss called Mitāksharâ**
**Composed by Baṭṭa Viśveśwara**
**The son of śrī Pedibhaṭṭa the wise great pandit.**

---

1 संख्यावन्तो vide अमर II. 7, 5 : "संख्यावान् पंडितः कविः ."

2 i. e. it is their nature itself which induces them to be serviceable and confer obligations upon others. No special reason is necessary.

KB

# INDEXES.

(Alphabetically arranged accordnig to the Sanskṛt alphabet.)

## AUTHORS.

—;0:—

## MĪMÂṆSÂ : JAIMINI'S SÛTRAS.

## MAXIMS OF LAW.



## IMPORTANT WORDS AND EXPRESSIONS



## CASES

| No. | Hindu Law Text—(*contd*). |
|---|---|
| XIV-V. | English Translation and notes uniform with the series. Price Rs. **12.** |
| XV. | The **Sanskāra Mayūkha**—Detailing the several purificatory ceremonies. (Text) Rs. **2.** |
| XVI. | The **Āchāra-Mayūkha**—In this are described the ordinary and extraordinary rounds of duties. (Text) Price Rs. **2.** |
| XVII. | The **Kāla** or **Samaya-Mayūkha**—Rules for determining days &c. and the importance of each, together with the rites and duties to be performed are described. (Text) Rs. **1-8.** |
| XVIII. | The **S'rāddha-Mayūkha**—Kinds of S'rāddhas and their definitions and an elaboration of their performance. (Text) Rs. **2.** |
| XIX | The **Nīti-Mayūkha**—Describing the general principles of polity, duties, and functions of a king, his ministers, &c. (Text) Re. |
| XX. | The **Dāna-Mayūkha**—Embodying and elaborating the Law of gifts viz. the kinds of gifts, who can make and take ? Their extent and their incidence. (Text) (not avilable). |
| XXI. | The **Utsarga-Mayūkha**—Dealing with the dedication of water places and their purification when poluted. (Text) Price As. **12.** |
| XXII. | The **Pratishthā-Mayūkha**—Consecration of Temples and also the re-establishment thereof. (Text) Price As. **12.** |
| XXIII. | The **Prāyaśchitta-Mayūkha**—Definitions and kinds of Prāyas'chittas. Result of non-observance. ( Text ) Rs. **2.** |
| XXIV. | The **S'uddhi-Mayūkha**—The Law of purification (Text) Price Re. **1.** |
| XXV. | The **S'anti-Mayūkha**—Describing the several propitiatory rites (Text) Rs. **2.** |

---